

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

IN THE DELAWARE COUNTY SUPERIOR COURT

CRAIG DUNN and PHILIP WILEY,)
et al.,)
 Plaintiffs,)
)
 -v-) CAUSE NO.
) 18D01-9305-CT-06
RJR NABISCO HOLDINGS)
CORPORATIONS, et al.,)
 Defendants.)

The deposition upon oral examination of
THOMAS A. KOCOSHIS, M.D., a witness produced and
sworn before me, Thomas A. Richardson, RDR-CM, Notary
Public in and for the County of Marion, State of
Indiana, taken on behalf of the defendants at the
offices of Medical Consultants, 2525 University
Avenue, Muncie, Indiana 47303, on November 19, 1997,
at 1:30 p.m. pursuant to the Indiana Rules of Trial
Procedure.

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1 THOMAS A. KOCOSHIS, M.D.

2 having been first duly sworn to tell the
3 truth, the whole truth, and nothing but the
4 truth took the stand and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. OHLEMEYER:

7 Q Good afternoon, Doctor. My name is Bill
8 Ohlemeyer. I represent a number of the
9 defendants in this lawsuit.

10 And will you let me know if you don't
11 understand a question I ask you?

12 A Yes, sir.

13 Q This ought to move along pretty quickly.
14 But at any time you want to take a break for
15 any reason, will you let us know?

16 A Yes, sir.

17 Q Can you describe for us the material that's
18 in front of you that you brought?

19 A Yes, sir. I have a copy of Dr. Roggli's
20 deposition.

21 Q In this case?

22 A Yes, sir. Do you wish to see it?

23 Q Yes.

24 A I have a copy of what appears to be a
25 chapter of a book co-authored by Dr. Roggli.

1 Q And that would be Chapter 7 of Pathology of
2 Asbestos-Related Diseases by Greenberg,
3 Pratt, and Roggli?

4 A That is correct. Shall I continue?

5 Q Please. By the way, I mean no disrespect by
6 the fact I'm looking at this while you are
7 talking.

8 A I have my C.V. Do you want me to list each
9 individual document?

10 Q I'll tell you what, if you will hand me that
11 folder, let me just try to describe them for
12 you. We have a deposition subpoena duces
13 tecum for today's deposition, right?

14 A Correct.

15 Q We have a letter from Attorney Paul Bokota
16 to you about the deposition.

17 We have the Notice of the deposition.

18 We have an April 27, 1995 letter from
19 Robert A. Cash & Associates to Pathology
20 Associated Medical Labs which appears to be
21 an inventory. Is that how you would
22 describe this?

23 A Yes, sir.

24 Q We have an authorization and a designation
25 of agent.

1 We have a pathology report dated
2 6-1-1991 from Pathologists Associated
3 Medical Laboratories at Ball Memorial,
4 signed by Dr. Brown, right?

5 A That's correct.

6 Q We have a 6-6-91 pathology report signed by
7 Dr. Baldwin?

8 A That is correct.

9 Q We have a 6-7-91 report of a cytology
10 specimen from Dr. Baldwin; is that right?

11 A That is correct.

12 Q We have a 6-12-91 pathology report and
13 pathologic diagnosis from Dr. Baldwin?

14 A That is correct.

15 Q We have a couple of cytology records
16 pertaining to Mrs. Wiley for specimens
17 collected 6-6 and 6-8. Or is that 6-10?
18 No, 6-18. One is collected on 6-18 and
19 signed 6-19, negative sputum sample; is that
20 right?

21 A That is correct.

22 Q And then the other three are dated 6-10,
23 collected 6-6. And they are a right body
24 fluid, a brushing, and a brushing?

25 A That is correct.

1 Q Who signed this out; do you know? Can you
2 read that signature?

3 A That's Dr. Daniel House.

4 Q And the referring physician being
5 Dr. Turner?

6 A That is correct.

7 Q I have a September 14, 1993 typewritten note
8 that says, "A set of slides on autopsy
9 #32-91, Mildred Wiley, was released to
10 Dr. N.C. Turner on September 14, 1993, for
11 delivery to Young & Riley, Attorneys at Law.
12 The release from the patient's family is
13 filed with the autopsy. Dr. Douglas W.
14 Shevlin reviewed the slides before release;"
15 is that correct?

16 A Yes.

17 Q Who is Dr. Shevlin?

18 A Dr. Shevlin is a pathologist who is now
19 practicing in Springfield, Illinois, and at
20 that time was a pathology resident here.

21 Q Here at?

22 A Ball Hospital.

23 Q I have a fax cover sheet dated April 29, '93
24 to you from Tom Young and a letter attached
25 to it from Mr. Young to you dated

1 with Dr. Turner on or around the time of the
2 autopsy. And she mentioned the fact that
3 Mrs. Wiley had been exposed to secondhand
4 smoke. I do recall that. I do not recall
5 the details of my conversation, which
6 obviously took place according to the
7 letter, with Mr. Tom Young.

8 Q Do you recall receiving in writing or
9 otherwise from Dr. Turner an expression of
10 opinion about the cause of Mrs. Wiley's
11 cancer prior to the time you conducted the
12 autopsy?

13 A I have no such recollection.

14 Q What about prior to the time you prepared
15 and signed the autopsy report?

16 A It is possible that this may have been
17 written in the chart. But I do not recall
18 receiving any written communication from
19 Dr. Turner stating that she thought it was
20 due to secondhand smoke.

21 Q Do you remember her telling you that by
22 telephone or otherwise?

23 A I believe it was by telephone.

24 Q And when do you think that was? Can you fix
25 it for me in relation to either the autopsy

1 or the preparation and signing of the
2 report?

3 A I believe it was before the signing of the
4 final report. I don't recall its exact
5 occurrence in relation to the preliminary
6 report. I suspect it was before, but my
7 memory may be faulty in that regard.

8 Q We will talk about that in a minute. Then
9 we have an affidavit of authorization signed
10 here by Mr. Wiley.

11 We have what looks to be a reference to
12 a couple of pieces of medical literature
13 dated May 3, 1993. Is this computer
14 generated?

15 A That is correct. That would have been
16 generated by the staff of the medical
17 library here.

18 Q The handwritten note says, "Nicki, for your
19 information. Thanks, Tom Kocoshis."
20 Describe for me the significance of that
21 handwritten note.

22 A To the best of my recollection, Nicki and I
23 may have had -- Dr. Turner and I may have
24 had telephone conversations. And I asked
25 that this search, literature search, be

1 done. And I shared this information with
2 her.

3 Q Then we have two draft copies of a July 26,
4 1995 letter to Daren Meredith at Robert Cash
5 & Associates?

6 MR. YOUNG: Sorry, the date of
7 those?

8 Q July 26, 1995, prepared I guess by Nancy
9 Roderer.

10 A That is correct.

11 Q Tell me what you know, if anything, about
12 these letters.

13 A If memory serves me correctly, these letters
14 were in response to this previous letter as
15 indicated on the drafts which you are
16 holding, trying to explain certain perceived
17 inconsistencies or omissions, et cetera.

18 Q In what?

19 A In the autopsy report.

20 Q How was it that perception came to either
21 the attention of the pathology office or to
22 you?

23 A Through this letter dated July 20th which
24 may be in that packet. I'm not sure.

25 Q We have a couple of phone messages. There

1 is some other material here, a fax to
2 Mr. Meredith from Nancy Roderer that
3 contains a signed copy of that letter.

4 Do you know who made the changes to the
5 letter?

6 A That is my handwriting. Those are my
7 corrections and so forth.

8 Q And attached to that are a couple of phone
9 messages -- Tom Young to you I take it on
10 January 24th?

11 A I don't know which year, but, yes.

12 Q The message says, "11-24 letter to
13 Dr. Turner, Re Mildred Wiley, 32-91," which
14 I assume is the pathology session number or
15 the autopsy report number?

16 A Yes.

17 Q "Asbestos bodies - look for additional
18 tissue? Found? Studies at Duke? Signed
19 NR."

20 Do you know what that's all about?

21 A To the best of my recollection, Dr. Turner
22 may have asked me to find what tissue to
23 send to Duke for assay for asbestos bodies.
24 And again, to the best of my recollection,
25 that tissue was not available at that time.

1 Q Then we've got a 1-25 message for Brad. Who
2 is Brad?

3 A Brad is Mr. Brad Slater. He is the diener
4 or the autopsy assistant.

5 Q And you wanted him to check to see if there
6 was any lung tissue available on that
7 autopsy?

8 A Yes, sir.

9 Q And Brad apparently says, "No," there isn't?

10 A That is correct.

11 Q We've got a Pathologists Associated
12 inventory again dated July 31, 1996.

13 We've got a set of medical
14 authorization and designation of agent
15 documents. And then we've got a copy of the
16 autopsy report, right?

17 A That is correct.

18 Q And what's the date on this report, Doctor?

19 A May I see it?

20 Q Yes. Let me ask if the date the autopsy was
21 conducted was June 24, 1991?

22 A That is correct.

23 Q At 9:30 in the morning?

24 A Yes, sir.

25 Q Is there any way to know how long the

1 autopsy lasted from the report?

2 A I don't believe so.

3 Q Is there any way to know from your
4 recollection how long it lasted?

5 A I would estimate between two and three
6 hours.

7 Q What is the basis of that estimate?

8 A Based upon previous autopsies and subsequent
9 autopsy.

10 Q Do you have any specific recollection of
11 this autopsy?

12 A No, sir, I do not.

13 Q And as I understand the report, we have a
14 description of the Title of the Case. It
15 says, "Adenocarcinoma of the Lung"?

16 A Yes, sir.

17 Q Explain that for me. What does Title of the
18 Case mean and when and how do you designate
19 this as "Adenocarcinoma of the Lung"?

20 A The Title of Case is the cause of death or
21 equals the cause of death.

22 Q Do you have that information before you
23 start the autopsy or do you fill that in
24 after you do the autopsy?

25 I guess my question basically is: Is

1 that the presumptive cause of death or is
2 that your diagnosis? And the reason I ask,
3 there comes a point in the report where you
4 give a diagnosis and a summary.

5 A That is correct.

6 MR. YOUNG: Well, you have several
7 questions.

8 Q I understand. Explain to me, Doctor, the
9 process or the reasons why and when you put
10 that information in here.

11 A I issue a preliminary report which includes
12 a cause of death. And based upon that
13 preliminary report, the transcriptionist
14 uses the cause of death as the Title of the
15 Case. This preliminary report ideally is
16 released within 48 to 72 hours after the
17 performance of the autopsy.

18 Q Okay. You see here under Clinical History
19 where it describes the chronology of events
20 leading up to Mrs. Wiley's death?

21 A Yes.

22 Q It says, "Diagnosis of adenocarcinoma of the
23 lung was made."

24 A That is correct.

25 Q So before you started the autopsy, you had

1 the clinical history, including a diagnosis
2 of adenocarcinoma of the lung?

3 A That is correct.

4 Q From where did you obtain that diagnosis?

5 A From the chart, from the reports, from the
6 surgical pathology and cytology reports
7 which were a part of the chart.

8 Q So you have available to you the pathology
9 reports on the 24th?

10 A That is correct.

11 Q Including the ones we've talked about,
12 Dr. Baldwin's?

13 A That is correct.

14 Q And from that information, you conclude that
15 there's a diagnosis of adenocarcinoma of the
16 lung?

17 A That is correct.

18 Q At that point, have you decided or concluded
19 that was adenocarcinoma found in the lung or
20 adenocarcinoma primary to the lung?

21 A Would you restate the question, please?

22 Q By looking at the pathology reports, you can
23 determine from what part of the body the
24 specimen was obtained?

25 A That is correct.

1 Q So at the point where you start the autopsy
2 and dictate the clinical history or receive
3 the clinical history and review it, have you
4 concluded this was an adenocarcinoma found
5 in the lung or whether it was an
6 adenocarcinoma then originated in the lung?

7 A Found in the lung.

8 Q And hence the title, "Adenocarcinoma of the
9 Lung"?

10 A Not necessarily. Adenocarcinoma of the lung
11 was based upon a combination. My diagnosis
12 of adenocarcinoma of the lung, my listing of
13 adenocarcinoma of the lung as the cause of
14 death was based upon a combination of these
15 clinical findings; of the surgical pathology
16 reports, cytology reports, and my autopsy
17 findings.

18 Q I understand that. And we get to that
19 farther down in the report. But at the
20 point where you have Title of the Case, does
21 the title come from the clinical history
22 that's presented to you?

23 A No, sir, it does not.

24 Q Well then, at some point then, we go page 1,
25 page 2, page 3. And there's a date 6-24-91

1 and the initials JWW:nn. What does that
2 mean?

3 A JWW refers to the pathology resident,
4 Dr. Wolaniuk. And nn is -- at that time her
5 name was Nancy Nilstat was the
6 transcriptionist. 6-24-91 would have been
7 the date that the gross protocol was
8 transcribed.

9 Q And it also happens to be the date that it
10 was performed?

11 A That is correct.

12 Q And it appears to have been performed by
13 Dr. --

14 A Wolaniuk.

15 Q Wolaniuk?

16 A That is correct.

17 Q Do you remember being present while
18 Dr. Wolaniuk conducted the gross protocol?

19 A I don't wish to evade your question, but I
20 think it might help if I explain my usual
21 procedure and the procedure that I can
22 recall for that.

23 Q All right. Do this for me, Doctor: However
24 you are comfortable with doing it, describe
25 for me your usual procedure, describe for me

1 the procedure that you were typically using
2 with Dr. Wolaniuk in June of '91, and then
3 describe for me what you specifically
4 remember about this autopsy with respect to
5 its gross protocol. How does that sound?

6 A My usual procedure varies according to the
7 level of experience and my subjective
8 judgment of the expertise of the resident.
9 I may spend the entire time of the autopsy
10 in the morgue with the resident, either
11 dissecting organs myself, or watching him
12 dissect them, et cetera, et cetera.

13 At the minimum, I would discuss the
14 case briefly before we would begin the
15 autopsy as to what the clinical findings are
16 and so forth. I may or may not come down
17 before the first incision is made. But I
18 always go down and review the organs after
19 they have been removed from the body.

20 Q When you say "review the organs," what do
21 you mean?

22 A I mean see them and palpate them with the
23 resident, in the presence of the resident.
24 We discuss the gross findings.

25 To the best of my knowledge, this would

1 have been the procedure. I would have
2 allowed Dr. Wolaniuk, with the assistance of
3 the diener, to do most of the dissection and
4 then would have reviewed the organs.

5 And to the best of my recollection,
6 that is what I did with Dr. Wolaniuk on that
7 date.

8 Q So page 1, 2, and part of page 3, up to the
9 initials JWW, are Dr. Wolaniuk's dictation
10 of his gross examination of the autopsy?

11 A That is correct.

12 Q Does it make sense that this Title of the
13 Case, Adenocarcinoma of the Lung, is his
14 dictation?

15 A I don't think I understand you.

16 Q Well, am I correct that it's clear that
17 Dr. Wolaniuk dictated these first two and a
18 half pages of this report?

19 A Yes.

20 Q So to the extent somebody had to dictate
21 "Title of the Case: Adenocarcinoma of the
22 Lung," that would have been Dr. Wolaniuk who
23 dictated that?

24 A Not necessarily. That Title of the Case,
25 neither I nor Dr. Wolaniuk would dictate the

1 title of this case as Adenocarcinoma of the
2 Lung. No, we do not do that. We dictate
3 the cause of death, which should be in a
4 preliminary report, which I'm not sure is in
5 that pile you're holding.

6 Q It says right here "Preliminary Autopsy
7 Report."

8 A That I believe is a typo.

9 Q Okay.

10 A I think it may be described in one of the
11 letters of Nancy Roderer.

12 Q We will get to that in a second. But you
13 don't disagree with me I'm holding something
14 that says Preliminary Autopsy Report, that
15 was dictated by Dr. Wolaniuk, and that says
16 "Title of the Case: Adenocarcinoma of the
17 Lung"?

18 A I agree.

19 MR. YOUNG: Excuse me, Counsel.
20 Since there's two reports that say
21 Preliminary Autopsy Report --

22 MR. OHLEMEYER: We will mark this.

23 MR. YOUNG: That's what I would
24 suggest, we mark this and keep it clear.

25 BY MR. OHLEMEYER:

1 Q And, Doctor, under the section of Lungs
2 where the description of the lungs is
3 provided, the lungs were weighed, right?

4 A Yes, sir.

5 Q They were observed?

6 A Yes, sir.

7 Q Some observations are noted, right?

8 A That is correct.

9 Q And a tumor is measured in the middle lobe,
10 right?

11 A That is correct.

12 Q Another mass in the right lower lobe is
13 measured and described?

14 A That is correct.

15 Q And a focus of the consolidation of the
16 right upper lobe is described but not
17 measured as possibly representing tumor?

18 A That is correct.

19 Q There is nothing in the description of the
20 lungs in this portion of the report that
21 states or concludes that this is a
22 primary -- well, that this is either an
23 adenocarcinoma or it's a primary
24 adenocarcinoma of the lung?

25 A That is correct.

1 Q So then underneath the initials here, there
2 is a section that says Microscopic?

3 A That is correct.

4 Q And then there is some more dictation,
5 right?

6 A That is correct.

7 Q And then there's a Final Pathologic
8 Diagnosis?

9 A That is correct.

10 Q And then there is a Final Summary?

11 A That is correct.

12 Q And then we have Dr. Wolaniuk's initials?

13 A That is correct.

14 Q But now we have a date of 3-18-93?

15 A That is correct.

16 Q Does that suggest to you that the
17 microscopic evaluation of this material was
18 conducted sometime after June of 1991?

19 A That is correct.

20 Q Does it suggest to you that it was conducted
21 at or about March 18th of 1993?

22 A That is correct.

23 Q Explain for me how it is that that much time
24 passed between the gross and the
25 microscopic.

1 A The resident did not approach me or any of
2 the other staff --

3 Q Can I interrupt you for a minute?

4 A Yes.

5 Q Does this suggest to you that Dr. Wolaniuk
6 did the microscopic?

7 A Yes. Dr. Wolaniuk did not approach me until
8 shortly before May 18th.

9 MR. YOUNG: March 18th?

10 A March 18th.

11 MR. WAGNER: 1993?

12 A That is correct. This is not -- I could
13 speak off the record for quite a bit on
14 this. But this is not looked upon
15 favorably, shall I say, by the joint
16 commission or by the College of American
17 Pathologists.

18 Q This procedure? The time lag?

19 A The time lag.

20 Q How experienced -- well, "experienced" isn't
21 the right word. But at what point in his
22 career was Dr. Wolaniuk in 1991? I don't
23 understand enough about medical school. I
24 mean, was he in his second year of medical
25 school? Where was he?

1 A I don't recall.

2 Q I guess all we would have to do is we ought
3 to be able to find that in a book somewhere.

4 A Yes, we can find that out from the medical
5 education department here.

6 Q Do you know how many autopsies, gross or
7 microscopic protocols he had conducted as of
8 June of 1991?

9 A I do not know that; but I can find it out,
10 sir.

11 Q Is there a record kept of that?

12 A Yes.

13 Q What about as of March of '93?

14 A I can also find that out, sir.

15 Q Dr. Wolaniuk signs page 5 --

16 A That is correct.

17 Q -- of what we will mark as Exhibit 1 here in
18 a second. And then it doesn't appear that
19 you have signed this. But it appears there
20 is something -- what does this say?

21 A "R.W. Pearson for."

22 Q Who is R.W. Pearson?

23 A He is one of my colleagues, Dr. Richard
24 Pearson.

25 Q What is the significance of Dr. Wolaniuk

1 signing this and Dr. Pearson signing it for
2 you?

3 A My best speculation as to why that happened
4 is that I was not present. I may have been
5 on vacation. I may have been at one of the
6 outlying hospitals. And for whatever
7 reason, there was pressure to complete the
8 report. And Dr. Pearson -- I'm not sure
9 what the legal term is.

10 Q Signed for it?

11 A Signed for it.

12 Q Do you ever sign reports for other doctors?

13 A Yes, I do.

14 Q What is it you're looking for when you sign
15 a report for someone else? How do you
16 decide whether to do it or not?

17 A I usually will speak with the pathologist
18 involved and say, "This is what is on the
19 report. Is this your recollection or is
20 this correct?"

21 Q So you presumed that Dr. Pearson spoke with
22 Dr. Wolaniuk and then signed the report?

23 A Or with me or both.

24 Q Is there any way for you to know whether you
25 had actually reviewed the microscopy in this

1 case prior to March of 1993?

2 A Only my recollection that I reviewed the
3 microscopy with him.

4 Q When you say reviewed it with him, do you
5 mean discuss what he observed or actually
6 look at the microscope?

7 A Actually look at a double-headed microscope
8 with Dr. Wolaniuk.

9 Q Is there a record of that occurring beyond
10 what I have indicated we will mark as
11 Exhibit 1?

12 A I don't believe there's a written record of
13 my actually sitting down at the microscope
14 and looking with him.

15 Q To the extent that Dr. Wolaniuk did it
16 sometime on or about the 18th of March in
17 '93, that's when you would have done it with
18 him?

19 MR. YOUNG: I guess I will object.
20 It assumes that the review is done on
21 March 18th. I think the only thing that's
22 been established so far is that the document
23 was dictated.

24 MR. OHLEMEYER: Your objection is
25 noted, Counsel.

1 Q As I recall your testimony, Doctor, the fact
2 this was dictated on or about March 18th,
3 1993, suggests to you that the microscopy
4 was done in that vicinity.

5 A That would be correct.

6 Q And your best recollection, although there's
7 no record of it, is that you would have
8 looked at this microscopy with Dr. Wolaniuk
9 sometime in that vicinity?

10 A That is correct.

11 Q I want to mark this as Exhibit 1. And then
12 what I would like to do, Doctor, is mark the
13 remainder of this file, which is entitled
14 Mildred Wiley, Exhibit 2. And we will get
15 you the original. We will have the court
16 reporter make a copy for us. I take it it's
17 not going to confuse you any to mark that
18 report separately from the rest of this
19 file?

20 A No.

21 Q I haven't mixed up your filing system?

22 A No.

23 MR. OHLEMEYER: Let me ask the
24 court reporter to mark that.

25 (Defendant's Exhibit(s) 1 & 2 marked

1 for identification.)

2 BY MR. OHLEMEYER:

3 Q For the record, I have marked as Exhibit 2
4 the folder you have labeled as Mildred
5 Wiley; is that correct?

6 A That is correct.

7 Q Let me back up. As counsel reminds me, you
8 talked about your recollection of your
9 general practice or your typical practice.
10 What is it that you can recall specifically
11 about this autopsy, the autopsy in question
12 being Mrs. Wiley's, separate and apart from
13 anything that might be described in
14 Exhibit 1?

15 A I can remember reviewing the organs, the
16 gross organs, with Dr. Wolaniuk at the
17 completion of the autopsy. I can also
18 remember reviewing the slides, the
19 microscopic slides, with Dr. Wolaniuk.

20 Q Anything else?

21 A I can remember speaking with Nicki Turner
22 regarding some of the clinical aspects of
23 this case.

24 Q What else?

25 A May I back up a little bit?

1 Q Sure.

2 A I have almost forgotten your original
3 question.

4 Q What is it specifically that you can recall
5 about this autopsy?

6 A Those three things.

7 Q Why is it that you recall reviewing the
8 organs and the slides with Dr. Wolaniuk?

9 Let me back up. How many autopsies
10 have you conducted since 1974 or 1975?

11 MR. YOUNG: Since '75?

12 A Is that what you want to say?

13 Q As I understand it, you have been a resident
14 since 1975?

15 A Yes, I completed my residency --

16 Q Let me ask a better question. How many
17 autopsies do you think you have conducted?

18 A Perhaps 500 to a thousand.

19 Q What is it about this one that allows you to
20 sit here five years later and recall
21 reviewing the organs or the slides with
22 Dr. Wolaniuk?

23 A I believe that Dr. Turner stressed the
24 importance of this case at or shortly after
25 the autopsy. It's a little bit like

1 remembering the birth of your first child.

2 Q So that was something that was unusual about
3 this case?

4 A Yes, sir.

5 Q Did Dr. Turner explain to you why she was
6 interested in this autopsy or it was
7 important, as you described it?

8 A At the time of the autopsy or shortly
9 thereafter, she expressed the fact that this
10 would be important information in a civil
11 suit.

12 Q What else can you remember her saying about
13 that?

14 A As I mentioned before, that the patient was
15 exposed to secondhand smoke.

16 Q And am I correct she also expressed some
17 opinion about the cause of the woman's
18 cancer or associated its cause with that
19 exposure?

20 A That is correct. Your latter statement is
21 correct.

22 Q Did Dr. Turner, at or near the time of the
23 autopsy, describe to you her belief that the
24 woman's cancer was associated with her
25 exposure to environmental tobacco smoke?

1 A That is correct.

2 Q You said you recall speaking with Dr. Turner
3 about the clinical aspects of the case.

4 When was that? Is that the conversation you
5 just told me about or was there another one?

6 A I do not recall the number of conversations.
7 I believe that when I spoke of the clinical
8 aspects of the case, it included the fact
9 that she may have associated the exposure to
10 secondhand tobacco smoke.

11 Q "She" being Dr. Turner may have associated
12 the cause of the disease with the exposure?

13 A Yes.

14 Q And how would you describe that in terms of
15 your prior dealings with Dr. Turner? Was it
16 typical or unusual for her to talk with you
17 about a particular autopsy on a particular
18 patient?

19 A I would say that Dr. Turner was more
20 interested, spent more time discussing this
21 case with me than perhaps a different type
22 of case.

23 Q Did she tell you why or did you ask her why
24 she was that interested in this case?

25 A I don't recall.

1 Q Did you form any opinions as to why she
2 might be interested in this case as opposed
3 to other cases?

4 MR. YOUNG: I will object to the
5 extent it asks him to speculate.

6 MR. OHLEMEYER: I am asking the
7 witness. I apologize for interrupting,
8 Mr. Young.

9 Q My question is: Did you form any opinions
10 in your mind about why Dr. Turner may have
11 demonstrated this unusual interest in this
12 case?

13 A I am not sure if I have expressed this
14 before, but I believe she expressed the fact
15 that this would be the subject of a civil
16 suit. And my assumption was that because it
17 was the subject of a civil suit, she devoted
18 more time or wanted to speak to me more
19 about it.

20 Q Did she tell you either then or since then
21 why or how she knew at the time that this
22 autopsy might be the subject of a civil
23 suit?

24 A Would you rephrase the question?

25 Q Did Dr. Turner tell you at that time, the

1 time of the autopsy, or any point in time
2 since then, why she believed that this
3 autopsy might be the subject of a civil
4 suit?

5 A I don't recall.

6 Q And by "civil suit," did you understand her
7 to mean a suit involving her or other
8 doctors or a suit involving a third party?

9 MR. YOUNG: I will object to the
10 form of the question.

11 A Are you referring to a malpractice suit?

12 Q Yes.

13 A At that time, I don't believe there was a
14 question of malpractice.

15 Q Tell me, Dr. Kocoshis, when and how you
16 received the deposition of Victor Roggli.

17 A I found this deposition on the desk of
18 Ms. Barbara Wright, who is one of the
19 transcriptionists and receptionists at
20 Pathologists Associated, on -- I don't
21 recall the exact date, whether it was
22 Saturday or Sunday.

23 Since that time, I found out from
24 Mr. Young that he had provided this copy to
25 me; that it had been delivered apparently to

1 Ms. Wright's desk or to the office.

2 Ms. Wright apparently neglected to tell me
3 the purpose of it. Obviously, it caught my
4 eye and I saw it. And I assumed it was for
5 me.

6 Q So it arrived unsolicited at some point in
7 the last few weeks?

8 A That is correct.

9 Q And have you read it?

10 A Yes, sir, I have.

11 Q Do you know Dr. Roggli professionally by
12 reputation or otherwise?

13 A Only from reputation.

14 Q Have you ever met him?

15 A No, I have not, sir.

16 Q Then you have a copy of we have already
17 identified as Chapter 7 of this
18 asbestos-associated disease textbook?

19 A Yes.

20 Q When and how did you obtain this?

21 A This was included with the deposition or in
22 proximity of the deposition.

23 Q Then you also have the text, "Tumors of the
24 Lung," by Mackay, Lukeman, and Ordonez?

25 A Yes, sir.

1 Q And you've got page 157 flagged?

2 A Yes, sir.

3 Q This appears to be your textbook?

4 A Yes, sir.

5 Q Thomas Kocoshis, M.D. And you have tagged
6 page 157. Tell me why.

7 A That particular page of that text deals with
8 adenocarcinoma of the lung and specifically
9 with metastases and difficulties in
10 sometimes distinguishing the two.

11 Q The difficulty in distinguishing --

12 A Metastatic.

13 Q From primary --

14 A From primary.

15 Q -- carcinoma, especially when you are
16 dealing with an adenocarcinoma?

17 A That is correct.

18 Q And we will talk about this in a little more
19 detail in a minute. But in part, that's due
20 to the fact that adenocarcinoma can arise in
21 a variety of, I guess for lack of a better
22 word, organs or parts of the body?

23 A That is correct.

24 MR. YOUNG: Objection to the form
25 of the question.

1 Q And it's a type of cancer that is commonly
2 found to metastasize through various routes
3 throughout the body?

4 MR. YOUNG: Again, objection to the
5 form of the question.

6 A Throughout the body meaning what?

7 Q I will be more specific. Of the different
8 histological types of carcinoma -- and feel
9 free to correct my nomenclature --
10 adenocarcinoma is one of the most
11 frequent -- is the type of carcinoma that
12 metastasizes the most frequently to the most
13 places?

14 MR. YOUNG: Object to the form.

15 Q I will rephrase the question, Doctor. I
16 ought to go into it in a little more
17 organized fashion, and we will do it in a
18 minute.

19 And then I know by looking at it, Dail
20 and Hammer, "Pulmonary Pathology;" is that
21 correct?

22 A Yes.

23 Q I have lugged this book all over the
24 country. You've got page 1603 flagged. And
25 for the record, this is apparently your

1 book.

2 A That is correct.

3 Q And it is which edition? Second edition.

4 You've got page 1603 flagged?

5 A That is correct.

6 Q Can you tell me why?

7 A Because there is a statement actually on

8 page 1602. May I quote from the book?

9 Q Sure. Go ahead.

10 A I don't want to infringe on anyone's

11 copyright or anything. "Pancreatic

12 metastases usually first involve nodes, then

13 liver, which spread to the lung thereafter."

14 Q When did you flag these two books at the two

15 pages we described?

16 A Either yesterday or today. I believe it was

17 today.

18 Q Have you spent any time with any of

19 Mr. Wiley's attorneys preparing for this

20 deposition?

21 A I have spoken with Mr. Young.

22 Q I don't mean to interrupt you. In this

23 case, that's not specific enough.

24 A Okay. Define what you mean.

25 Q Mr. Young is what I mean. I'm sorry, we

1 have got a joke. There is more than one
2 Mr. Young.

3 A Jim Young.

4 Q Okay, Jim Young.

5 A Shall I continue?

6 Q Yes.

7 A I spoke with Mr. Jim Young. Well, I have
8 spoken to him on the phone regarding the
9 deposition and so forth, the scheduling and
10 so forth.

11 Approximately, I want to say two weeks
12 ago, Mr. Young brought the slides to my
13 office. And I reviewed them with him. And
14 he asked me questions regarding the autopsy
15 report, certain technical questions, what I
16 felt I was an expert in, what I felt I was
17 not an expert in.

18 Q Was that the first time you had met with
19 Mr. Young or any other attorneys to talk
20 about issues specific to this case?

21 A Face to face?

22 Q Yes.

23 A To the best of my recollection, yes.

24 Q Now, you had some telephone calls with
25 people about scheduling and things. But did

1 you have actual substantive discussions over
2 the telephone with lawyers relating to
3 issues in the case?

4 A I may have spoken, according to one of the
5 exhibits which you have, to Mr. Jim Young's
6 brother, Mr. Tom Young.

7 Q About the tissue issue?

8 A Yes.

9 Q Fair enough. You said you looked at the
10 slides a couple of weeks ago?

11 A Yes, sir.

12 Q Did you make any notes or dictate any
13 impressions of the slides?

14 A I did not.

15 Q Was that the first time you had looked at
16 those slides since any review you might have
17 done with Dr. Wolaniuk back in 1993?

18 A I believe that I have reviewed the slides on
19 at least one occasion, if not more, between
20 May 18th of '93 and two weeks ago.

21 Q Let's start with May of '93.

22 A Sorry. May I correct that? I believe it
23 was March.

24 Q March, you're right. Tell me what it is
25 that you can recall or why it is you recall

1 actually reviewing those slides with
2 Dr. Wolaniuk in March of '93.

3 MR. YOUNG: I will object. That's
4 a double question.

5 MR. OHLEMEYER: I will rephrase it.

6 Q Tell me, Doctor, do you remember reviewing
7 the slides with Dr. Wolaniuk in March of
8 '93?

9 A I remember them.

10 Q Tell me why it is you remember them.

11 A Because of the importance of the case.

12 Q Importance as described to you by
13 Dr. Turner?

14 A That is correct.

15 Q Two weeks ago you looked at them with
16 Mr. Young?

17 A That is correct.

18 Q You believe at some point in time between
19 then, you remember looking at them?

20 A That is correct.

21 Q Tell me when or how or what it is you
22 remember about that.

23 A I believe that I may have looked at them
24 before they were sent to various persons or
25 parties requesting them.

1 Q Do you have any record of that?

2 A No. May I back up?

3 Q Maybe I ought to ask you: When you say
4 "review," do you mean review with an eye
5 toward pathological observations or review
6 with an eye toward inventory?

7 A Inventory.

8 Q Tell me, Doctor, what anatomic pathology is.

9 A Anatomic pathology is the study of
10 structural changes, gross and microscopic
11 and I suppose molecular, related to disease.

12 Q And what's the purpose of that?

13 A To establish a diagnosis or diagnoses on the
14 basis of structural changes.

15 Q And with respect to cancer, is that the only
16 way to make such a diagnosis?

17 Let me rephrase the question. I take
18 it, depending on how you define "cytology,"
19 I mean, cytology involves the same type of
20 thing, only looking at structural changes in
21 different specimens?

22 A In individual cells as opposed to groups of
23 cells.

24 Q I guess my question though is: Is that how
25 cancer is diagnosed by pathologists, making

1 pathological diagnoses?

2 A Yes, sir.

3 Q And that's what you and other pathologists
4 are trained by background and education to
5 do?

6 A That is correct.

7 Q And when you do that in a hospital like
8 this, do you, Dr. Kocoshis, do it more often
9 with respect to postmortem situations or
10 situations in which there is a surgeon or
11 internist waiting for a diagnosis in order
12 to consider treatment options?

13 A I would consider at this point in time, I am
14 doing as much -- I'm probably doing as much
15 surgical pathology or pathology practice on
16 living patients as postmortem pathology.

17 At that time in 1991, I probably was
18 doing more postmortem type of pathology.

19 Q With respect to surgical pathology in cases
20 in which carcinoma is suspected, at that
21 point, is it fair to say you are almost
22 universally unconcerned with determining the
23 cause of the disease as opposed to defining
24 or describing the disease?

25 MR. YOUNG: Object to the form of

1 the question.

2 A That is correct.

3 Q And is it fair to say that in a good number,
4 if not a majority, of the postmortem
5 pathological cases in which you are
6 involved, again, you are more concerned with
7 defining the disease or its location of
8 origin as opposed to its cause as it relates
9 to carcinoma?

10 A That is correct.

11 Q Separate and apart from your professional
12 experience in surgical or anatomical
13 pathology, have you developed any interest
14 in research areas or any specialties?

15 A I have a certificate of special competence
16 in hematology.

17 Q Explain that for me.

18 A The study of hematology, being the study of
19 the diseases of the blood.

20 Q When and how did you develop that specialty?

21 A I did one year of fellowship here at Ball
22 Memorial Hospital and took an exam --

23 Q Sorry, go ahead.

24 A -- which was given by the American Board of
25 Pathology.

1 Q Have you ever done any special reading or
2 special investigation on the issue of the
3 etiology of lung cancer?

4 A I have not done research.

5 Q I mean, you obviously have read a little bit
6 at least in Dail and Hammer and, what is it,
7 Roggli and Pratt?

8 A To be honest --

9 Q Greenberg.

10 A To be honest -- I should be honest.

11 Q That's a good starting point.

12 A It's a speech habit that I have. I did not
13 read this.

14 MR. WAGNER: "This" being?

15 Q "This" being the Roggli, Greenberg, and
16 Pratt chapter?

17 A That is correct.

18 Q These two books you certainly have on your
19 shelf?

20 A That is correct.

21 Q And you consider them to be authoritative in
22 the field of pulmonary pathology or tumors
23 of the lung?

24 A Yes, sir.

25 Q What about Devita, "Cancer Principles and

1 Practice of Oncology"? Do you have that
2 book?

3 A I don't have it. I have heard of the book.

4 Q What about Thurlbeck and Churg, "Pathology
5 of the Lung"?

6 A I also have heard of that book.

7 Q Do you recognize Dr. Churg as an authority
8 on pathology of the lung?

9 A Dr. Andrew Churg?

10 Q Correct.

11 A That is correct.

12 Q As compared to his father, Jacob Churg?

13 A That is correct.

14 Q Are there any journals, periodicals you
15 subscribe to, that deal with the etiology of
16 cancer?

17 A Not specifically. It is possible that
18 articles appear in journals that I subscribe
19 to.

20 Q A better question: What journals do you
21 subscribe to?

22 A Archives of Pathology, American Journal of
23 Clinical Pathology, Journal of Clinical
24 Microbiology.

25 Q What background, education, or experience do

1 you have in microbiology?

2 A I have had background during my residency,
3 pathology residency, in microbiology. And I
4 was medical director of the microbiology
5 section of Pathologists Associated Medical
6 Laboratories from 1992 through the end of
7 June, I believe, of 1996.

8 Q And what is microbiology?

9 A The study of microorganisms and their
10 relationship to disease, human disease in
11 this case.

12 Q Something different than molecular biology?

13 A That is correct.

14 Q Sorry, go ahead.

15 A Although, molecular biology is a part of or
16 can be considered a part of microbiology.

17 Q Do you have any special knowledge in the
18 area of microbiology?

19 A I do not consider myself as having a special
20 knowledge in that area.

21 Q Have you ever testified in a lawsuit before
22 or at trial? Let me rephrase the question.

23 Have you ever offered opinions as a
24 pathologist in court?

25 A I have in criminal cases.

1 Q Like a medical examiner?

2 A Homicide, yes.

3 Q Have you ever testified or offered opinion
4 testimony in a case that involved chronic
5 disease, such as but not limited to cancer?

6 A No.

7 Q Have you ever been involved in a lawsuit as
8 a party in connection with your professional
9 activities?

10 A Yes, sir, I have.

11 Q Can you just generally describe that for me?

12 A After 18 years of practice, I was -- I have
13 been named -- during that 18-year period, I
14 have been named personally in two suits.

15 Q What did they involve? What kind of issues
16 did they involve?

17 A The one involved overcalling a breast
18 biopsy. May I add this was "meritless." It
19 was determined to be meritless by the
20 Medical Review Board of the state of
21 Indiana.

22 Q When you say "overcalling," you mean
23 diagnosing the biopsy as cancer that
24 somebody claimed was not cancer?

25 A That is correct.

1 Q And the second one?

2 A The second one involved overcalling, again,
3 a kidney biopsy as being cancer on a frozen
4 section.

5 Q Is it fair to say, Doctor, that the practice
6 of pathology involves some intra- and
7 inter-observer variability?

8 A That is correct.

9 Q By that, I take it you understand what I
10 mean by that?

11 A I understand.

12 Q That's a bad question. But what I mean by
13 that, that you may look at the same specimen
14 on separate occasions and reach different
15 judgments?

16 A That is correct.

17 Q And you may look at a specimen and judge it
18 or diagnose it one way, whereas another
19 pathologist may diagnose it another way?

20 A That is correct.

21 Q And that is, for lack of a better word, just
22 inherent in what you do?

23 A That is correct.

24 Q Do you smoke?

25 A I do not.

1 Q Have you ever?

2 A No, but I eat Fig Newtons.

3 Q You are smiling about the --

4 A I anticipated that question. I'm being a
5 little facetious. We need a little levity.

6 Q You used the word "expert" a while back. Do
7 you have an understanding of what that word
8 means in a lawsuit or in a context like
9 this?

10 A Mr. Jim Young defined it for me.

11 Q How did he define it for you?

12 A To the best of my recollection -- I didn't
13 record it -- but he said that it was one
14 that, on the basis of training, experience,
15 background, had more than a lay person's
16 knowledge regarding something.

17 Q Bearing in mind you're a medical doctor, do
18 you have any special training or
19 specialization in determining the etiology
20 of cancer?

21 A No, I do not.

22 Q What about do you consider yourself to have
23 any special knowledge or training in the
24 areas of epidemiology?

25 A No, sir.

1 Q Or pulmonology?

2 A No, sir.

3 Q Or toxicology?

4 A No, sir.

5 Q You are hesitating because I suppose in
6 microbiology, you have some familiarity with
7 it, I guess?

8 MR. YOUNG: I will object to the
9 form of the question.

10 A With regard to -- actually with regard to --
11 medical-legal is not the correct term. But
12 regarding certain homicides and so forth, I
13 encountered this topic or suicides.

14 Q Poisoning cases?

15 A Poisoning, yes, specifically.

16 Q And in a case like that, I take it you are
17 asked to examine a body to determine whether
18 or if you can observe or detect the presence
19 of certain poisons in a body?

20 A That is correct.

21 Q Am I correct in some instances, there are
22 things that you can observe that you connect
23 to the ingestion of that poison; but in
24 others, you have to take specimens and have
25 somebody else analyze them?

- 1 A That is correct.
- 2 Q Is it fair to say, Doctor, that you have not
3 been asked to offer an opinion in this case
4 about the cause of Mrs. Wiley's cancer?
- 5 A To the best of my recollection, no one has
6 asked me point blank.
- 7 Q It's simpler than that. Have the lawyers
8 retained you or hired you to offer opinion
9 testimony at trial about the cause of
10 Mrs. Wiley's death?
- 11 A Emphatically, no.
- 12 Q I take it they haven't asked you to offer
13 opinions regarding the diagnosis and
14 treatment of her disease up to the point
15 where you got involved with the autopsy?
- 16 A That is correct.
- 17 Q I take it they have not asked you to
18 formulate or express opinions about the
19 health risks associated with exposure to
20 environmental tobacco smoke or tobacco
21 smoke?
- 22 A That is correct.
- 23 Q You're a medical doctor who obviously has
24 been involved in your profession for a
25 while. What do you think about cigarettes

1 in terms of whether they should or should
2 not be a legal product?

3 MR. YOUNG: I will object to the
4 relevance and the form of the question.

5 A That question is beyond the realm of my
6 expertise.

7 MR. OHLEMEYER: Can we take a short
8 break, and then we will come back?

9 (Recess from 2:41 p.m. to 2:46 p.m.)

10 BY MR. OHLEMEYER:

11 Q Back on the record. Doctor, let me know if
12 you don't understand a question.

13 A Yes, sir.

14 Q As a pathologist, are you aware of any
15 diagnostic test or any machine or anything
16 that can be used to determine the cause of a
17 specific individual's cancer?

18 A No.

19 Q Let's talk about lung cancer, or a better
20 description, tumors of the lung. I take it
21 you would agree that lung cancer -- the
22 reason I made the distinction is lung cancer
23 is not a single disease, is it?

24 A That is correct.

25 Q It involves different histological types of

1 cancer and subtypes of cancers?

2 A That is correct.

3 Q And it's one of the things you as a
4 pathologist do is to identify the
5 histological type of cancer doctors are
6 dealing with?

7 A That is correct.

8 Q And one of the reasons that's done, is it
9 not, is because treatment of the cancer can
10 be a function of its histological cell type?

11 A That is correct.

12 Q Certain types of cancer are treated
13 differently and respond to treatment
14 differently than other types of cancer?

15 A That is correct.

16 Q Can the histology give you some indication
17 or some clue as to from where in the body a
18 carcinoma originates?

19 A To some extent, yes.

20 Q One example that comes to my mind is
21 retinoblastoma. I mean, blastoma in the
22 retina makes sense to me. Can you explain
23 to me when and how to some extent you can
24 use a histological diagnosis to identify or
25 rule out where the cancer occurred or

1 originated?

2 A For instance, if you were to find an
3 adenocarcinoma of the lung that was
4 metastatic to the lung, you could say with
5 almost 100 percent certainty that it did not
6 arise from the epidermis of the skin,
7 because a tumor arising from the epidermis
8 of the skin would be a squamous cell
9 carcinoma almost exclusively.

10 Q Is it fair to say, Doctor, that metastatic
11 neoplasms of the lung are the most common
12 tumor found in the lung?

13 A That is correct, yes, sir.

14 Q And are the lungs the organ systems that
15 acquire the most metastases of any system in
16 the entire body?

17 A That is correct, to my knowledge.

18 Q And it is thought that's related to several
19 unique features of the lung; for example,
20 the fact that they receive the entire
21 cardiac output every minute, have the
22 densest capillary bed in the body, and are
23 the first capillary plexus met after most of
24 the lymphatic drainage enters the venous
25 system?

1 A I would need to qualify that. May I?

2 Q Sure.

3 A Certain organs have patterns of venous
4 drainage. And an organ such as the
5 pancreas, its venous blood would drain into
6 the liver first and then into the lung
7 eventually.

8 Q What about its lymphatic drainage?

9 A The pancreas?

10 Q Yes.

11 A I do not recall off the top of my head where
12 the lymphatic drainage from the pancreas
13 itself arises. I do know that the lymphatic
14 drainage from the intestines accumulates in
15 an area near the pancreas called the
16 cisterna chyli which then drains -- should I
17 spell that for the reporter?

18 C-I-S-T-E-R-N-A C-H-Y-L-I.

19 Q Sometimes we can just go back and do it
20 later. Whatever suits you.

21 A And this drainage then goes by way of the
22 thoracic duct and eventually enters the
23 blood system, the circulatory system.

24 Q Cancer can spread through the blood?

25 A That is correct.

1 Q Through the lymph system?

2 A That is correct.

3 Q I guess it can also spread by extension?

4 A That is correct.

5 Q Just grows?

6 A That is correct.

7 Q Are there other ways for cancer to spread
8 throughout the body?

9 A Yes, sir. Lung cancer can spread from -- is
10 thought to be able to be spread by inhaling
11 cancer cells, so that these cancer cells
12 could move from one part of the lung to
13 another, because they are inhaled deeper or
14 farther away from a bronchus, for instance.

15 Q So that would be movement or translocation
16 within the lung?

17 A Yes, sir.

18 Q And then I take it the lungs, what I read to
19 you from this book about the cardiac output
20 and the capillary bed, is an accurate way to
21 state what a layman might say is the lungs
22 being a fertile field for the growth of
23 cancer?

24 A That is correct.

25 MR. YOUNG: I will object to the

1 form of the question and ask if you could
2 direct the record or the witness to the page
3 that you are referring to.

4 MR. OHLEMEYER: It's page 1581,
5 chapter 35.

6 Q Is it fair to say, Doctor, that carcinomas
7 metastatic to the lung are the most common
8 subgroup of malignancy?

9 A May I repeat what you have said?

10 Q Sure.

11 A Are the most --

12 Q I will read this to you, and you can tell me
13 if you agree or disagree: "Because of their
14 overall frequency, carcinomas metastatic to
15 the lung are the most common subgroup of
16 malignancies. Although lymphomas and
17 sarcomas are also important and are
18 discussed in this chapter."

19 A May I qualify? I think that the author is
20 trying to say greatest subgroup of
21 malignancies of the lung or in the lung,
22 rather than subgroup of malignancies as a
23 whole.

24 MR. YOUNG: I would also like to
25 interpose an objection with your agreement,

1 to show it as a continuing objection, to
2 taking the passages from the text out of
3 context and reading them to the witness and
4 asking him to agree or disagree.

5 MR. OHLEMEYER: You have a
6 continuing objection to the form of my
7 question.

8 MR. YOUNG: Thank you. I would
9 like to show the objection I just made as
10 continuing.

11 MR. OHLEMEYER: That objection
12 doesn't need to be made. So it obviously
13 would continue not --

14 MR. YOUNG: I'm just trying to keep
15 from interrupting you.

16 MR. OHLEMEYER: I appreciate it.
17 Thank you. So, yes, I will give you a
18 continuing objection to the objection that
19 you have made.

20 MR. YOUNG: Thank you.

21 Q Doctor, lymphomas and sarcomas aren't a
22 subgroup of malignancy in the lung, right?

23 A Yes.

24 Q "Yes" they are or "yes" they are not?

25 A Yes, they are.

1 Q Do you agree or disagree that virtually any
2 malignancy may spread to the lung, but the
3 most common malignancies that spread to the
4 lung arise in the breast, colon, stomach,
5 pancreas, kidney, melanoma, prostate, liver,
6 thyroid, adrenal, and male and female
7 genital tracts, roughly in that order?

8 A I would agree.

9 Q By absolute numbers, Doctor, would you agree
10 that adenocarcinomas far outnumber the other
11 extra thoracic solid tumors that metastasize
12 to the lung?

13 A That is correct.

14 Q And you may have answered this, but let me
15 ask you again: Is the pathologist often
16 challenged with whether a tumor in the lung
17 is primary or metastatic?

18 A That is correct.

19 Q With respect to adenocarcinoma, what is the
20 significance of its secretion of mucin or
21 its lack of secretion of mucin?

22 A The secretion of mucin helps to subclassify
23 it, subclassify the tumor; the
24 mucous-secreting tumors being either
25 adenocarcinomas or a variant called a

1 mucoepidermoid carcinoma.

2 Q Are there adenocarcinomas that don't secrete
3 mucin?

4 A That is correct.

5 Q If you have an adenocarcinoma that doesn't
6 demonstrate mucin, what, if anything, does
7 that tell you?

8 Does it allow you to rule things out?

9 In terms of primary sites, does it allow you
10 to rule out or rule in certain sites?

11 A The presence of mucin in an adenocarcinoma
12 would -- and I believe I'm answering your
13 question. The presence of mucin in an
14 adenocarcinoma would tend to rule out kidney
15 primary.

16 Q What would the absence of mucin in an
17 adenocarcinoma tell you?

18 A Not much to me either way.

19 Q Can endobronchial metastases be confused
20 with centrally-placed primary lung
21 carcinomas?

22 A Yes, sir.

23 Q Does that present a challenge in
24 distinguishing metastatic and primary
25 disease, that being the observation of an

23 Q Are most primary adenocarcinomas of the lung
24 and large cell undifferentiated carcinomas
25 of the lung peripheral tumors?

- 1 A I believe most adenocarcinomas; I'm not sure
2 about large cell.
- 3 Q So most primary adenocarcinomas of the lung
4 are peripheral?
- 5 A To the best of my knowledge, yes, sir.
- 6 Q And words like "most" and "most often" are
7 derived from the frequency with which those
8 findings are observed?
- 9 A That is correct.
- 10 Q Does that type of information, the frequency
11 with which those types of things are
12 observed, help you as a pathologist decide
13 whether you are dealing with a primary or
14 metastatic carcinoma in any particular part
15 of the body?
- 16 A It is a factor.
- 17 Q When you're looking at the microscope and
18 you have what you suspect to be a cancer,
19 what are the factors that you use to help
20 determine whether you are looking at a
21 primary or metastatic cancer?
- 22 A First of all, I would take gross factors.
- 23 Q Exactly. Good place to start.
- 24 A I would use size of the tumor as one factor.
25 Another factor would be the typical venous

1 and/or lymphatic drainage from one site to
2 another.

3 Microscopically, I acknowledge there is
4 difficulty in determining primary from
5 metastatic adenocarcinoma.

6 Q Let me stop you there. You have introduced
7 a factor that you didn't explain. But I
8 suspect you would agree that histology is
9 one factor you use, although it's less
10 helpful with some subtypes of cancers than
11 others?

12 MR. YOUNG: I will object to the
13 form of the question.

14 A That is correct.

15 Q And I take it observations of other
16 pathologists about the frequency with which
17 certain sized histological types of tumors
18 occur in certain places is another factor
19 you use?

20 A That is correct.

21 MR. YOUNG: Object to the form.

22 Q And am I correct, Doctor, that at some
23 point, you take that information and use it
24 to form a judgment that becomes your
25 pathological diagnosis?

1 A That is correct.

2 Q I may have asked you this, and I apologize.
3 Is it fair to say that malignant tumors from
4 virtually any site in the body can
5 metastasize to the lung?

6 A That is correct.

7 Q Do poorly differentiated carcinomas of
8 unknown primary sites often involve
9 metastases to the lung?

10 A That is correct.

11 Q And in those cases, is the primary site
12 identified during life in only a small
13 percentage of those patients?

14 A To the best of my knowledge, that is
15 correct.

16 Q And in those cases, does autopsy sometimes
17 fail to determine primary site with
18 certainty?

19 A Sometimes.

20 Q And is there actually a phenomenon or a
21 diagnosis made by pathologists known as
22 poorly differentiated carcinoma of unknown
23 primary site?

24 A Your question was: Is there a phenomenon
25 known as?

1 Q Yes.

2 A Yes.

3 Q Are poorly differentiated carcinomas of
4 unknown primary sites often found to have
5 metastasized to the lung?

6 A That is correct.

7 Q Another way of putting that is on autopsy or
8 postmortem, you can observe cancer in the
9 lung, yet not find or account for its
10 primary site of origin?

11 MR. YOUNG: I will object to the
12 form of the question.

13 MR. OHLEMEYER: Let me rephrase the
14 question.

15 Q What that phenomenon or that diagnosis
16 describes is the situation where you as the
17 pathologist have detected the presence of
18 cancer in the lung, but that you believe not
19 to have originated there, but you are unable
20 to find the part of the body from which it
21 did originate?

22 A That can happen, yes.

23 Q How often does it happen?

24 A In my experience, it has not happened very
25 often.

1 Q It's something that you have read about and
2 are trained to consider when you do your
3 job?

4 MR. YOUNG: I will object to the
5 form of the question.

6 Q Let me rephrase it. The phenomenon that we
7 have described or the diagnosis that you
8 have described as happening not very often
9 is something that is described and discussed
10 in textbooks and classes?

11 A Yes, sir.

12 Q Because it's something you need to consider
13 when you do what you do as a pathologist?

14 A Yes, sir.

15 Q Do you know whether certain histological
16 types of lung cancer are more or less
17 strongly associated in epidemiological
18 studies with a history of cigarette smoking?

19 A From my reading, it is apparent that small
20 cell carcinoma of the lung and squamous cell
21 carcinoma of the lung have been associated
22 most strongly with smoking.

23 Q And adenocarcinoma being least strongly
24 associated?

25 MR. YOUNG: I will object to the

1 form of the question.

2 A Less strongly.

3 Q Do you know or do you consider lung cancer
4 to be a multi-factorial disease? Or is that
5 something you don't --

6 A I believe that to be beyond the realm of my
7 expertise.

8 Q Do you know what tamoxifen is?

9 A Yes, sir.

10 Q What is it?

11 A It is an antiestrogen drug.

12 Q Do you know why and how it's used?

13 A It is used in treatment of certain cancers
14 which are estrogen sensitive.

15 Q And give me an example of an estrogen
16 sensitive cancer.

17 A Breast.

18 Q It sounds like there was a comma as opposed
19 to a period there.

20 A I know it's used for breast cancer because
21 my wife uses it. I'm less certain about
22 uterus and ovary.

23 Q Do you know anything about Mrs. Wiley's
24 medical history prior to her admission to
25 Ball Memorial Hospital?

1 A Only from what I have read in the
2 deposition.

3 Q Of Dr. Roggli?

4 A Yes.

5 Q So at the time you were involved in this
6 autopsy, you had no information beyond what
7 might have been contained in the records of
8 the pathology that were available to you or
9 the discussions you had with Dr. Turner?

10 A And the medical records, yes.

11 Q I guess my question goes to her historical
12 medical record.

13 A Other than what's in there, no.

14 Q "There" being what?

15 A Other than the medical record available to
16 me, the chart available to me, at the time
17 of autopsy.

18 Q Is that chart part of that Exhibit No. 2?

19 A No, it is not.

20 Q Would that have been the Ball Memorial
21 chart?

22 A That is correct.

23 Q So I guess maybe that's a better question.
24 When you do the autopsy, does the hospital
25 send the body and the chart to you?

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Q You mentioned that the joint commission frowns upon -- those may be my words and not your words -- frowns upon a delay such as the one we observed between the autopsy and the dictation of the microscopic examination in this case. Can you explain that for me, what it is about it that --

A They feel, as well as the College of
American Pathology, that it's a
less-than-ideal level of service --

Q Why is that?

A -- for there to be a delay. It delays the -- it may delay insurance settlements. It may delay civil suits. It may delay the resolution of concerns of the family or one thing or the other.

Q Does it have anything to do with, you know, concerns about the judgment of the pathologist either being colored by the passage of time or the acquisition of extraneous information?

A To my knowledge, no. In my opinion, no.

Q Is that a fair concern, the effect of passage of time and the accumulation of

1 extraneous information with respect to the
2 pathological diagnosis of gross description?

3 MR. YOUNG: Object to the form of
4 the question.

5 A In my opinion, no, that should not be a
6 concern.

7 Q Is it easier to diagnose a tumor or a cancer
8 microscopically if you know what it is
9 you're looking for? I don't mean it
10 facetiously.

11 A I think I understand. I'm trying to --

12 MR. YOUNG: I will object to the
13 form of the question. I think it's vague.

14 Q You understand what I'm saying, don't you,
15 right?

16 A It is.

17 Q It is easier?

18 A It is easier if you know what to expect or
19 what is most likely.

20 Q What do you know about this autopsy with
21 respect to when or how it was ordered? Is
22 "ordered" the right word?

23 A Requested. From the review of the
24 materials, including the autopsy report
25 available to me, a permit was signed. And

1 apparently the next of kin requested a
2 limitation that the head not be examined,
3 the cranial contents not be examined.

4 This was not documented. But our
5 policy is if the family requests it at some
6 later point, we don't hold them strictly to
7 the permit.

8 Q How do you or Dr. Wolaniuk know that at the
9 time -- you've got a woman who dies. A day
10 later, you've got a body. You've got a
11 permit. You've got a chart. How do you
12 know or how did that restriction --

13 A I don't know in this particular case. I
14 know in other cases, we may get a telephone
15 call from the doctor's office, less commonly
16 from the family themselves, perhaps from
17 nursing service saying that these are the
18 family's wishes.

19 Q If there had not been a restriction as you
20 have described it to me in this case, would
21 there have been a more extensive autopsy
22 conducted?

23 A In this case, probably not.

24 Q Why?

25 A Because there was no indication as I recall

1 of specific neurologic findings. And we
2 felt that the cause of death was adequately
3 established from the findings in the chest
4 and abdomen.

5 Q Would a suspicion of brain metastases be a
6 sufficient neurological finding to have
7 caused you to do a more extensive autopsy?

8 A It should be.

9 Q Quite frankly, I don't have the records in
10 front of me. But if that were the case, if
11 there was something in the chart that
12 suggested that, absent this restriction, you
13 might have done a more extensive autopsy?

14 MR. YOUNG: I will object. You're
15 asking him to speculate to consider things
16 that are not in evidence.

17 A That is correct.

18 Q Now, back a minute to this conversation with
19 Dr. Turner -- and again, I don't want to put
20 words in your mouth -- I think your words
21 were "civil suit." She mentioned to you
22 something about a civil suit. Do you recall
23 that?

24 A That is my prior testimony, yes.

25 Q Did she tell you anything about that suit,

1 who it involved, what kind of claims were
2 going to be made, who was going to get sued
3 in it, things like that?

4 A To the best of my recollection, the "tobacco
5 companies" were to be sued. What was the
6 rest of your question?

7 Q Did she describe to you who was going to
8 bring the lawsuit or what claims were going
9 to be made?

10 A I don't recall a specific sum being named,
11 but that the family were going to be the
12 plaintiffs, as I understand or as I recall.

13 Q Did she tell you at that time what
14 involvement or interest, if any, she was
15 going to have in that kind of lawsuit?

16 A No, she did not.

17 Q Since that time, have you talked with
18 Dr. Turner about this case, this patient, or
19 this lawsuit?

20 A Yes.

21 Q Tell me when. Kind of just walk me through
22 that chronology.

23 A I don't remember, of course, the exact date
24 or time. I did discuss with Dr. Turner the
25 fact that, for instance, four paraffin

1 blocks seemed to be missing.

2 Q You had the conversation with Dr. Turner.
3 You've done the autopsy. Dr. Wolaniuk has
4 dictated the report, which takes us to about
5 March of '93, right?

6 A Yes, sir.

7 Q At that point, had you had another
8 conversation with Dr. Turner about the
9 patient, the autopsy, or the lawsuit?

10 A I am assuming I did based on the
11 bibliography or the literature search that I
12 did. I don't recall the details of that.

13 Q The literature search that's described in
14 Exhibit 2?

15 A Whichever exhibit that is.

16 Q Was there a date on that? May 3rd, '93?

17 A Yes, sir.

18 Q So you think that was the next time you had
19 a conversation with Dr. Turner?

20 A I'm assuming between March 18th, when the
21 report was finalized, and May 3rd that I had
22 some conversation.

23 Q And what is the next conversation with
24 Dr. Turner that you can recall about the
25 case or the patient or the lawsuit?

1 A I believe it had to do with the paraffin
2 blocks.

3 Q And when would that have occurred?

4 A I don't remember the exact date. I would
5 assume it would be after the report. Well,
6 after March 18th, of 1993.

7 Q So if I was going to set forth this
8 chronology, we had a discussion at or near
9 the time of the gross protocol with
10 Dr. Turner?

11 A Yes, sir.

12 Q Then we have a discussion at or near March
13 of '93 when the final microscopic was
14 signed?

15 A That is correct.

16 Q Then we have a discussion or at least some
17 kind of contact in May of '93 connected to
18 the literature search?

19 A May I back up?

20 Q Sure.

21 A On March 18th of 1993, I may not have
22 discussed it. I simply had my secretary
23 send her a copy of the report. But there
24 was apparently a conversation between
25 March 18th and May 3rd.

1 Q That resulted in you sending her the
2 literature?

3 A That is correct.

4 Q And you don't recall any specifications of
5 the conversation?

6 A I do not recall the specifics of that
7 conversation.

8 Q Then there was a discussion about the blocks
9 at some point?

10 A That is correct.

11 Q And then what about the next discussion, if
12 any?

13 A I do not recall having a further discussion
14 with Dr. Turner.

15 Q What about any other doctor, like Dr. Songer
16 or any other doctor?

17 A Not to my knowledge.

18 Q Did anyone tell you at the time of the
19 autopsy or did you read or determine from
20 any review of medical records the purpose
21 for the autopsy?

22 A I don't recall specifically.

23 Q Am I right that one reason to do an autopsy
24 would be to determine the immediate cause of
25 death?

1 A That is correct.

2 Q One reason to do an autopsy would be to
3 determine, I guess for lack of a better
4 word, the precipitating cause of a death?

5 A That's correct.

6 MR. YOUNG: Are you talking about
7 in general?

8 Q In general. The poison or the bullet?

9 A Yes.

10 Q One reason to do an autopsy would be to
11 determine the primary site of a suspected
12 cancer?

13 A That is correct.

14 Q There might be legal reasons, as you said,
15 to do an autopsy.

16 Do you recall whether anybody told you
17 or whether there was any reference in the
18 medical records you reviewed at the time as
19 to why this autopsy was being conducted?

20 MR. YOUNG: Excuse me. What time?

21 MR. OHLEMEYER: At the time the
22 autopsy was conducted.

23 A I don't recall specifically, no.

24 Q From a medical point of view -- leave aside
25 the legal aspects of this. From a medical

1 point of view, is there any reason or was
2 there any reason to perform an autopsy on a
3 patient like Mrs. Wiley?

4 MR. YOUNG: I guess I will object
5 to that as asking for conclusions that other
6 physicians might have had as opposed to what
7 a pathologist might require.

8 Q I will rephrase the question. Let me back
9 up. I take it you don't conduct, nor do you
10 suggest that an autopsy be conducted on
11 every death in this hospital?

12 MR. YOUNG: I will object to the
13 form of the question.

14 A That is correct.

15 Q From a medical point of view, the autopsy
16 does not provide you or any other doctor
17 with any information that you can use to
18 treat -- I don't mean this to be facetious.
19 But the autopsy isn't necessary to treat
20 Mrs. Wiley?

21 A That is correct.

22 Q So from a medical point of view, separate
23 and apart from any legal reasons or even any
24 educational purpose that might be served by
25 allowing someone to do an autopsy or to

1 learn how to do it, is there a medical
2 reason to perform the autopsy?

3 A I understand your question now. No.

4 Q Was a videotape prepared of the autopsy?

5 A No, sir, it was not.

6 Q Audiotape?

7 A I'm trying to remember at that time what
8 type of dictating equipment we had. I
9 suspect that one was not. At least if it
10 was, it probably has since been erased.

11 Q Did Dr. Turner ever suggest to you, either
12 specifically or in substance, that
13 Mrs. Wiley's situation, her cancer and her
14 death, presented an opportunity to either
15 sue tobacco companies or to promote or
16 highlight issues related to smoking and
17 health?

18 MR. YOUNG: I will object to the
19 form of the question and the lack of
20 definition of "opportunity." It's also
21 vague.

22 Q Let me rephrase the question. Did
23 Dr. Turner ever express to you the
24 importance, as you have used that word, of
25 this autopsy with respect to any kind of

1 issue relating to tobacco companies, tobacco
2 control, smoking and health and public
3 health?

4 A Yes, sir.

5 Q What is it she said about that?

6 A I don't recall her specific words, but that
7 the information from this autopsy would be
8 important in a suit.

9 Q Beyond that, did she say anything about the
10 importance of that civil suit in terms of
11 its uniqueness or its precedence?

12 A I believe at some time, although I don't
13 know at what time, she said that this may be
14 the first time there may be a suit regarding
15 secondhand smoke.

16 Q Do you remember when it was she might have
17 said that to you?

18 A I do not.

19 Q Would it have been at or near the time of
20 the autopsy?

21 A It could have been.

22 MR. YOUNG: I will object. It's
23 been asked and answered.

24 Q Your answer to that question was, "It could
25 have been"?

1 A Could have been.

2 Q You described earlier for me some pressure
3 to get the autopsy done or complete the
4 report in March of '93. From where did that
5 pressure originate?

6 A I don't recall specifically in this case.

7 Q Would it have been Dr. Turner or somewhere
8 else?

9 A It may have been Dr. Turner. It may have
10 been the family.

11 Q Have you ever spoken with Dr. Songer about
12 this patient, this autopsy, or this case?

13 A To my recollection, no.

14 Q Have you ever spoken with the Wiley family
15 about this patient, this autopsy, or this
16 case?

17 A To my recollection, no.

18 Q Why don't we take a copy of that autopsy
19 report, Doctor. And I will ask you some
20 questions. Look at the section on the
21 heart.

22 A Yes, sir.

23 Q Is it fair to say that based on the autopsy
24 findings, Mrs. Wiley had coronary heart
25 disease at the time she died?

1 A These findings speak against significant
2 coronary artery disease.

3 Q Do you see the reference to "...less than
4 25 percent stenosis of the left main,
5 circumflex, left anterior descending, and
6 right coronary arteries, secondary to
7 atherosclerosis"?

8 A Yes, sir.

9 Q You wouldn't characterize that as coronary
10 heart disease?

11 A I would characterize it as minimal coronary
12 heart disease.

13 Q Does it suggest an elevated cholesterol
14 level?

15 A It neither rules it in or out.

16 Q Would one cause of that narrowing of the
17 left main, circumflex, left anterior
18 descending, and right coronary arteries, et
19 cetera, be an elevated cholesterol level?

20 MR. YOUNG: I will object to the
21 form of the question.

22 Q A better question would be: Would an
23 elevated cholesterol level be an etiology
24 consistent with that pathological finding?

25 A It would be a contributing factor.

3 A Yes, sir, as a matter of fact.

5 | A Again, I laugh.

10 A Elevated cholesterol can be either primary,
11 which means inherited, or secondary. Causes
12 of secondary -- and I apologize if I'm
13 sounding too glib, because I do this every
14 day.

23 | Q It could be secondary to a high fat diet?

25 | Q I appreciate your comment. From time to

1 time, we do smile and laugh. And it
2 certainly doesn't reflect any disrespect to
3 the Wileys or Mrs. Wiley or the seriousness
4 of the proceedings. But sometimes we have
5 all been a little more familiar with these
6 things than perhaps we should. But you
7 shouldn't be embarrassed about that.

8 You see the reference to the lungs
9 where it says, "The lungs and hilar nodes
10 are not significantly anthracotic and there
11 is no bollous emphysema." Do you see that
12 sentence?

13 A Yes, sir.

14 Q Define "anthracotic" for me.

15 A Anthracotic means containing a black
16 pigment.

17 Q And what is the significance of a remark
18 that, "The lungs and hilar nodes are not
19 significantly anthracotic"?

20 A It would mean that the patient did not have
21 significant contact with carbon particles.

22 Q And I take it you as a pathologist use
23 anthracotic generically to refer to
24 something more than coal dust?

25 A Not necessarily. When I speak of

1 anthracosis, I speak of the black carbon
2 pigment found in coal dust or other sources.

3 Q That's my next question. What other sources
4 are there of anthracosis is besides coal
5 dust?

6 MR. YOUNG: Sorry, but the question
7 I think is vague, whether you're asking him
8 to list all the possible sources or what he
9 might find when he is considering and using
10 that term in a postmortem situation.

11 Q In a postmortem when you note the absence of
12 significant anthracosis in lung specimens,
13 what are the potential sources of such
14 anthracosis?

15 A To my understanding, in addition to coal
16 dust, cigarette smoke and I believe other
17 industrial pollutants.

18 Q Is anthracosis commonly found in the lungs
19 of people who smoke or are exposed to
20 industrial pollutants?

21 A It is.

22 Q What is bollous emphysema?

23 A Bollous emphysema refers to the abnormal
24 dilatation of areas of the lung with the
25 formation of sacs or bullae.

1 Q What causes that?

2 A One cause may be cigarette smoking, alpha 1
3 antitrypsin deficiency, and there are
4 probably others.

5 Q I'm smiling now because I had an hour and a
6 half discussion with a doctor once about
7 alpha 1 antitrypsin deficiency and its
8 relationship to cigarette smoking.

9 Do the lungs of most cigarette smokers
10 contain some degree of emphysematous
11 changes?

12 A It depends, as I understand it, on the
13 amount of smoking exposure.

14 Q You see where it says on the cut section
15 description -- we've talked about this I
16 think earlier -- there's a measurement of a
17 tumor mass in the middle lobe, another mass
18 in the right lower lobe, and a focus of
19 consolidation in the right upper lobe?

20 A Yes, sir.

21 Q Does the report describe where the primary
22 tumor is believed to be in the lung; that
23 being the upper lobe, middle lobe, or lower
24 lobe?

25 A It does not indicate that specifically, no.

1 Q According to the report or according to the
2 description of the observations, was the
3 primary tumor in the right lung a peripheral
4 or endobronchial tumor?

5 A I think it would be difficult to determine
6 that. For the mass in the middle lobe being
7 so large, it probably involved the periphery
8 to some extent as well as the central part
9 of the lobe.

10 Q So there is really no specific description
11 in the report of whether the tumor was a
12 peripheral or endobronchial tumor?

13 MR. YOUNG: I will object. I think
14 that misstates his testimony.

15 A That is correct.

16 Q Am I correct, Doctor, that peripheral
17 lesions in the lung can grow toward the
18 bronchus and compress it?

19 A That is correct.

20 Q And can lesions in the hilar lymph nodes
21 compress the bronchus?

22 A That is correct.

23 Q On bronchoscopy, can that phenomenon as I
24 just described be mistaken for an
25 endobronchial lesion?

1 A That is beyond the realm of my expertise.

2 Q Do you have any idea or any opinion as to
3 how long it would take a tumor in the lung
4 to grow to 17 centimeters in size?

5 A Not offhand.

6 Q Do you know whether it's a matter of days or
7 months or weeks or years?

8 MR. YOUNG: I will object. He has
9 already answered that question. He didn't
10 know.

11 MR. OHLEMEYER: I'm not trying to
12 put words in your mouth.

13 A I would anticipate it could not grow that
14 large in days or even weeks.

15 Q You see where it talks about the fluid in
16 the pleural cavities?

17 A Yes, sir.

18 Q It says approximately 1050 cc. on each side?

19 A May I interject here? I think that is a
20 typo.

21 Q That was my question. Go ahead and explain
22 it for me.

23 A I believe if you read under Lungs, the
24 paragraph under lungs, in both pleural
25 cavities, there is approximately 100 cc. of

1 fluid. I have the feeling that the upper
2 number is probably mistaken.

3 Q So it should be 100?

4 A That is my interpretation.

5 Q Can you explain that discrepancy?

6 A Well, English --

7 Q It's not a transposition?

8 A English was not this man's primary language.

9 So I think that may have been part of it.

10 Q This man being Dr. Wolaniuk?

11 A That is correct.

12 Q Did he speak English?

13 A Yes.

14 Q Do you see in the pancreas, where it says,
15 "There is a possible metastatic tumor of the
16 peripancreatic lymph nodes identified"?

17 MR. YOUNG: Excuse me, where are
18 you?

19 MR. OHLEMEYER: Page 3, top.

20 A Yes, sir.

21 Q How was the determination made that tumor
22 was metastatic as opposed to primary to the
23 pancreas?

24 A At that time based on the fact that the
25 tumor was smaller than the tumor in the

1 lung.

2 Q So in the gross description, judgment was
3 based on the size of the tumor?

4 A That is correct.

5 Q Grossly, is it difficult to distinguish
6 between tumors in the peripancreatic lymph
7 nodes and tumors in the pancreas?

8 A Yes.

9 Q And microscopically, was tumor actually
10 found in the pancreas?

11 A It was.

12 Q Let me ask you this: I've got a
13 reference -- and I will show you in a
14 second -- to a progress note dictated by
15 Dr. Turner in '93 about infiltration of
16 pancreatic tissue. There is no mention in
17 the autopsy report of infiltration of the
18 pancreatic tissue, is there?

19 A That is correct.

20 Q Do you know why that finding wasn't
21 described in the autopsy report?

22 A That is an omission.

23 Q Is it possible that Dr. Wolaniuk looked at
24 the pancreatic tissue and then you looked at
25 the slide later and observed the

1 infiltration that perhaps he didn't see when
2 he looked at it?

3 A I doubt it because at one point, we did look
4 at it together.

5 Q Do primary lung cancers commonly metastasize
6 to the pancreas?

7 A Yes.

8 Q Do you have a reference or citation for me
9 on the frequency of that?

10 A Not offhand.

11 Q Do primary pancreatic cancers commonly
12 metastasize to the lung?

13 A Yes.

14 Q What is a more frequent observation, the
15 metastasis of cancer of the lung to the
16 pancreas or the metastasis of pancreatic
17 cancer to the lung?

18 A I don't know.

19 Q Do you know what CA15-3 is?

20 A To the best of my knowledge, it is a tumor
21 marker, a substance found in the serum. It
22 can also be found on the cells themselves.
23 I do not believe it is specific for
24 pancreatic cancer but has been noted in
25 patients with pancreatic cancer.

1 Q Has it also been noted in patients with
2 primary adenocarcinoma of the breast?

3 A I don't know.

4 Q Do you know is it possible for a patient to
5 have primary carcinoma of the breast without
6 palpable breast masses?

7 A Yes, it is.

8 Q Have you ever observed that in postmortem?

9 A Not at postmortem. In living patients I
10 have.

11 Q Do you know why the breast wasn't observed
12 microscopically?

13 A Our usual procedure is not to unless there
14 is a compelling reason to suspect a breast
15 primary.

16 Q What sort of reasons, short of and including
17 compelling reasons, would there be to
18 suspect breast primary that would suggest
19 you would section the breast?

20 MR. YOUNG: I will object to the
21 form of the question. I think it's
22 compound.

23 Q I will rephrase the question. When are the
24 breasts sectioned? What is the history,
25 clinical history, pathological findings, or

1 information you use to determine when to
2 section?

3 A If there was, for instance, a known -- let
4 me put it this way: If there was a
5 suspicion, a strong suspicion, there was
6 breast carcinoma based on mammograms, based
7 on family history or some other -- I will
8 try and be more specific.

9 Q What about a history of fibrocystic disease?

10 A Not necessarily.

11 Q What about a situation where the oncologist
12 was treating the patient for a potential
13 primary carcinoma of the breast?

14 A I would if requested.

15 Q And I take it the fact it wasn't done in
16 this case suggests it was not requested?

17 A That is correct.

18 MR. YOUNG: I will object. I think
19 that misstates the testimony.

20 Q Look at page 3, Doctor, where it says
21 Adrenal Glands.

22 A Yes, sir.

23 Q I'm having trouble reconciling something on
24 page 3 and page 4. I would like you to
25 explain it to me. It says on page 3, "Two

1 adrenals are present and are slightly
2 enlarged." Do you see that?

3 A Yes.

4 Q "There are cortical nodules in both adrenals
5 identified which also represent metastatic
6 tumor." And that's the gross finding,
7 right?

8 A That is correct.

9 Q On the microscopic report it says, "Sections
10 of adrenal are unremarkable."

11 A Yes, sir.

12 Q That seems to me to be inconsistent.

13 A That is an inconsistency, sir.

14 Q And are there explanations for it?

15 A I think that there may have been nodules on
16 the adrenals due to nodular hyperplasia, but
17 not necessarily cancer.

18 In other words, these were interpreted
19 initially as being metastatic. And
20 obviously the gross was dictated at or
21 shortly after the autopsy, the microscopic
22 being dictated at the time the autopsy was
23 done.

24 Q Is it possible for an organ to be grossly
25 abnormal but microscopically abnormal?

1 Isn't that what you just described for me as
2 an explanation for this discrepancy?

3 A It's possible that an organ may appear to be
4 involved with neoplasm and, in fact, not be
5 involved in neoplasm.

6 Q Is it also possible that an organ can appear
7 to be grossly normal but microscopically
8 abnormal?

9 A Yes.

10 Q Is it possible that an organ can appear
11 grossly abnormal but also appear to be
12 microscopically normal because the technique
13 or --

14 A Sampling error, yes, sir.

15 Q Sampling error?

16 A Yes.

17 Q Based on the information available to you,
18 do you think there was or was not cancer in
19 the adrenal glands in this case? Or can you
20 just not say?

21 A I can't really say.

22 Q With respect to the kidneys, it says grossly
23 the kidneys were normal?

24 A That's correct.

25 Q And microscopically, in fact, adenocarcinoma

1 was noted in the left kidney?

2 A That is correct.

3 Q There's an example of a gross --

4 A Normal gross.

5 Q Normal gross and abnormal microscopic?

6 A Yes, sir.

7 Q How is it you determined at the point in
8 time where that dictation was rendered that
9 cancer of the kidney was metastatic as
10 opposed to primary?

11 A Based upon again the size, the fact that it
12 looked like the tumor in the lung.

13 Q Well, would a metastatic tumor in the lung
14 look microscopically like it's a primary
15 tumor?

16 A In most cases. There may be --

17 Q Leaving size aside, but just
18 microscopically? I guess I have excluded
19 size, because I have said microscopically.
20 I cut you off. Go ahead, Doctor.

21 A There may be some differences.

22 Q For the most part though, is it fair to say
23 that adenocarcinoma metastatic to the lung
24 looks like adenocarcinoma from the primary
25 site under the microscope?

1 A In general, yes.

2 Q Is it fair to say under the microscope,
3 adenocarcinoma primary to the lung looks
4 like adenocarcinoma metastatic to the lung?

5 A That is correct.

6 Q The spinal column reference, do you know or
7 were you aware that in May of 1991, a
8 myelogram and lumbar CT demonstrated bony
9 destruction of the spinous process of L2
10 with associated soft tissue mass in that
11 area with respect to Mrs. Wiley?

12 A To the best of my knowledge, I was aware
13 from the chart or from the interpretation of
14 the chart by the resident.

15 Q When would you have become aware of that?

16 A At the time of autopsy or shortly before the
17 time of autopsy.

18 Q The spinal column though isn't mentioned in
19 the gross or the microscopic, is it?

20 A That is correct.

21 Q Why?

22 A I believe it is an error and omission.

23 Q An omission in the execution of the autopsy
24 or the dictation of the report?

25 A In the dictation. The reason I say that is

1 because we have, of course, slides that were
2 taken I'm reasonably sure from the lumbar
3 spine.

4 Q And slides that demonstrate cancer?

5 A They do not demonstrate cancer.

6 Q They demonstrate bony destruction of the
7 spinous process of L2 with associated soft
8 tissue mass?

9 A The slides do not.

10 Q What do the slides demonstrate?

11 A The slides demonstrate absence of cancer.

12 Q You see where it says in the Final
13 Pathological Diagnosis section --

14 MR. YOUNG: Where?

15 Q In the Final Pathological Diagnosis section,
16 it says there is, "No pathological
17 diagnosis," for the spinal column?

18 A Yes.

19 Q What does that mean?

20 A That means there were no histopathologic,
21 gross, or histologic abnormalities of the
22 spinal column as examined at autopsy.

23 Q Let me back up for a second, Doctor. You
24 and I talked about sampling techniques?

25 A That is correct.

1 Q As it may relate to variations in
2 microscopic and gross?

3 A That is correct.

4 Q Describe that for me. I mean, explain it in
5 a little more detail.

6 A Well, I think that -- do you want it
7 specifically regarding the spinal column?

8 Q Just in general, the concept. I mean, if
9 you were going to explain that to your class
10 or to a class you were going to teach, what
11 is it that you're talking about? And how
12 does it account for those differences?

13 A Well, one should try to sample something
14 that is grossly abnormal or a part of an
15 organ that is grossly abnormal. One should
16 try to sample an area that doesn't appear
17 too necrotic because this can create a
18 difficulty in interpretation of the
19 microscopic.

20 Q And depending on how you do that, you may or
21 may not prepare slides of abnormalities that
22 exist?

23 A Yes.

24 Q Right?

25 A That's correct.

25 MR. YOUNG: I will object to the

1 argument. He said it's his.

2 Q Do you remember signing this?

3 A Do I remember the actual act of signing it?

4 Q Yes.

5 A No.

6 Q Describe for me what this is and how it
7 compares and contrasts both in terms of its
8 preparation or substance in terms of
9 Exhibit 1?

10 A The preliminary autopsy report was prepared,
11 again, in this case the same day as the
12 autopsy was done and lists, again, the
13 immediate cause of death, contributing
14 conditions, a brief summary, based upon the
15 gross findings only.

16 Q Dr. Wolaniuk, I take it, does the gross?

17 A Yes.

18 Q And then quickly or as quickly as he can,
19 does this have anything to do with preparing
20 the death certificate?

21 A Yes. As a matter of fact, I believe that I
22 signed the death certificate.

23 Q So you think Exhibit 3 was prepared in
24 connection with the creation or preparation
25 of the death certificate?

1 MR. YOUNG: I will object to the
2 form of the question.

3 Q That's my question. Is there something
4 about your procedure that connects this to a
5 death certificate?

6 A Yes, because the transcriptionist uses the
7 information from this to prepare it.

8 Q And at some point, Dr. Wolaniuk does a
9 little more detailed description of his
10 gross?

11 A That is correct.

12 Q And I suspect in Indiana, there's a line on
13 the death certificate that requires you to
14 fill out immediate cause of death?

15 A There is.

16 Q So at the point in time Exhibit 3 was signed
17 and prepared, the microscopy hadn't been
18 done?

19 A That is correct.

20 Q In general, is that a source of mistaken
21 information on death certificates because of
22 the need to fill out a cause of death before
23 you do your microscopy?

24 MR. YOUNG: I will object. That
25 calls for speculation, and it's overly

1 broad.

2 A It can be.

3 Q And is that something that can affect the
4 use of those certificates for
5 epidemiological or statistical purposes?

6 A It can be.

7 Q Something you would want to control -- not
8 you, but the people who do those studies
9 ought to control for?

10 A Yes.

11 Q Am I correct essentially then that
12 Dr. Wolaniuk does the gross. And he looks
13 for and finds what he believes to be
14 adenocarcinoma of the right lung?

15 MR. YOUNG: I will object to you
16 testifying, number one. Number two, it
17 calls for the witness to speculate about
18 what Dr. Wolaniuk has done or hasn't done.

19 MR. OHLEMEYER: I'll rephrase the
20 question. Thank you, Counsel.

21 Q Dr. Wolaniuk hasn't done a microscopic of
22 this tissue at this point in time, has he?

23 MR. YOUNG: Object to the form of
24 the question. It's been asked and answered.

25 A That is correct, on the postmortem tissue.

1 Q Correct. He has available to him the
2 pathology reports of the premortem tissues?

3 A That is correct.

4 Q And so I take it at a minimum, what he is
5 doing is trying to correlate his
6 observations with the pathological diagnosis
7 in those medical records?

8 MR. YOUNG: Same objection.

9 A That's correct.

10 Q In an effort to provide information that is
11 required by law to be put in the death
12 certificate?

13 MR. YOUNG: Same objection.

14 A That is correct.

15 Q What are bilateral pleural effusions?

16 A Accumulation of fluid in the pleural
17 cavities on both sides, right and left.

18 Q What causes or what etiological factors are
19 associated with bilateral pleural effusions?

20 A Cancers can cause pleural effusions, either
21 primary or metastatic. Congestive heart
22 failure can cause pleural effusions.
23 Infections can cause pleural effusion.

24 Q Are bilateral pleural effusions associated
25 with a prior exposure to asbestos? Let me

1 rephrase the question.

2 A I don't know.

3 Q A better question would be: Are bilateral
4 pleural effusions a marker or biological
5 marker of prior exposure to asbestos?

6 A It can be associated.

7 MR. OHLEMEYER: Let's take a short
8 break.

9 (Recess from 3:57 p.m. to 4:06 p.m.)

10 BY MR. OHLEMEYER:

11 Q Doctor, if you don't understand a question,
12 will you let me know?

13 A Yes.

14 Q As I understand it, Dr. Kocoshis, you are a
15 pathologist who lives [DELETED]

16

17 A That is correct.

18 Q And you got your medical degree from Indiana
19 University School of Medicine in 1974?

20 A That is correct.

21 Q Can you describe for me your postgraduate
22 education.

23 A I did two years of training in anatomic
24 pathology at St. Vincent Hospital in
25 Indianapolis, Indiana. After that, I did

1 two years of clinical pathology training at
2 Lutheran General Hospital in Park Ridge,
3 Illinois. Following that, I did a year of
4 training in hematology, in laboratory
5 hematology, at Ball Memorial Hospital.

6 Q And describe for me what clinical pathology
7 is.

8 A Clinical pathology has to do with the
9 management of the clinical laboratory which
10 performs analyses on various specimens,
11 including blood and urine, to aid in the
12 diagnosis and management of patients. And I
13 may also add interpretation of results in
14 addition to actual management of the
15 laboratory.

16 Q And the interpretation of those results
17 would include pathological diagnosis of
18 cancer and other types of diseases?

19 A That is correct.

20 Q Are you Board certified in your discipline?

21 A That is correct, in both anatomic and
22 clinical pathology.

23 Q Explain to me what a Board certification is.

24 A That is a testament or a document stating
25 that, quite frankly, you have minimal

1 competence in a particular area of medicine.

2 Q And in your case, you have Board
3 certifications in both anatomic and clinical
4 pathology?

5 A That is correct.

6 Q Are you licensed to practice medicine in any
7 state other than Indiana?

8 A I am licensed in Illinois.

9 Q And what is your current position?

10 A I am a pathologist on the active staff of
11 Ball Memorial Hospital, in addition to
12 having staff privileges at other hospitals.

13 Q And that's here in Muncie?

14 A Ball Memorial Hospital is here in Muncie.

15 Q How long have you had that position?

16 A I have been on the staff here since August
17 of 1979. The first year it was called -- it
18 was not called active staff. It was called
19 some other name that I can't recall off the
20 top of my head.

21 Q The title?

22 A The title. I did the same duties, but the
23 title was conditional or provisional staff.
24 I don't remember exactly what it was called
25 the first year.

1 Q Your resume or curriculum vita suggests you
2 were the Deputy Coroner of Marion County
3 from December of '74 to January of '76?

4 A Yes.

5 Q What is a deputy coroner and what did you do
6 as a deputy coroner?

7 A The coroner is someone who determines the
8 cause of death in cases in which there may
9 be a question. Obviously, according to
10 English common law, it has many further
11 ramifications. But basically in modern
12 times, this term unfortunately or
13 fortunately has intertwined with the term
14 "medical examiner."

15 Q For a period of two years, you were the
16 deputy medical examiner in Marion County?

17 A That is correct. My duties with regard to
18 that were more in terms of gathering data,
19 documentation, so forth. I did very few, if
20 any, true coroner autopsies during that
21 period of time.

22 Q I take it the coroner did that?

23 A Right, or his designee.

24 Q Describe for me any professional societies
25 or organizations you belong to.

1 A I'm a Fellow of the American College of
2 Pathologists.

3 Q Is that the highest honor as it were that
4 pathologists in this country can obtain?

5 A That's a difficult question to answer.

6 Q Is the College of American Pathologists the
7 preeminent or the foremost organization of
8 pathologists in this country?

9 A That in combination with the American
10 Society of Clinical Pathologists.

11 Q And you are a fellow in both organizations?

12 A That is correct.

13 Q And what other professional societies and
14 organizations?

15 A I'm a member of the county medical society;
16 the state medical association, Indiana State
17 Medical Association; the American Medical
18 Association, the Indiana Association of
19 Pathologists.

20 Q American Society for Microbiology?

21 A That is correct.

22 Q I notice that you have published a couple of
23 papers or three that deal with hematology.

24 A That's correct.

25 Q And one of your coauthors has been a

1 Dr. Triplett?

2 A That's correct.

3 Q Is Dr. Triplett a pathologist?

4 A Yes, sir.

5 Q Is his specialty hematology?

6 A That is correct.

7 Q Dr. Kocoshis, you told us earlier that you
8 had some meetings with Mr. Young and had
9 reviewed some material that he provided to
10 you.

11 A Yes, sir.

12 Q Do you expect to bill him for your time in
13 connection with that?

14 A No, I do not.

15 Q Have you submitted or do you expect to
16 submit a bill to Mr. Young for any time you
17 have spent in connection with this lawsuit?

18 A I do not facetiously unless my partners
19 twist my arm or something.

20 Q Do you know or do you have any expectation
21 as to whether it is the intention of any of
22 Mr. Wiley's attorneys to have you come
23 testify at trial in this matter?

24 Let me rephrase the question. Have any
25 of the attorneys that represent Mr. Wiley

3 A To my knowledge, no.

7 A I do not know that information.

15 A Your question is did we discuss that?

18 | A Regarding that specifically, no, I do not.

<http://legacy.library.ucsf.edu/tid/gzq07a00/pdf> <http://www.industrydocuments.ucsf.edu/docs/nphl0001>

3 Q What do you mean by "normally"?

9 Q Do you recall discussing with Dr. Turner the
0 possibility that Mrs. Wiley suffered from a
1 primary adenocarcinoma of the breast or
2 pancreas given her elevated level of CA15-3?

15 Q That's not to say it didn't happen; you just
16 don't remember?

17 | A Right.

18 Q Do you believe, Doctor, it would be unusual
19 to find tumor in a peripancreatic lymph node
20 without finding a primary pancreatic tumor?

21 | A No.

22 Q What would account or explain a tumor in a
23 peripancreatic lymph node in the absence of
24 a primary pancreatic tumor?

25 | A It can occur due to -- well, metastasis from

1 a primary lung, for instance. If there has
2 been invasion or involvement -- invasion is
3 a better term -- of the thoracic duct which
4 carries lymph from the lower part of the
5 body to the upper part of the body. It
6 could move in a retrograde fashion to the
7 peripancreatic concern.

8 Q You say retrograde movement. Is that the
9 typical movement or the atypical movement?

10 A Atypical movement.

11 Q Do you recall discussing your impressions of
12 or sharing your impressions of the slides
13 prepared at Mrs. Wiley's autopsy with
14 Dr. Turner around May of 1993?

15 MR. YOUNG: I will object. That's
16 been asked and answered and covered earlier.

17 A I believe we're dealing with March of '93,
18 aren't we?

19 Q Yes. I guess the time isn't as important to
20 me as generally I just want to redirect your
21 attention to do you recall having a
22 discussion with Dr. Turner in the spring of
23 '93 about your impressions of those slides?

24 MR. YOUNG: I will object.

25 A Specifically dealing with the impression of

1 the slides, I don't recall.

2 Q Let me ask a better question. Dr. Turner
3 has told us --

4 MR. YOUNG: Why can't he finish?

5 MR. OHLEMEYER: Go ahead. I'm
6 sorry.

7 A I'm saying that I'm assuming I had this
8 conversation based upon that bibliography
9 which I provided for her. But the tenor of
10 that conversation I don't remember.

11 Q Dr. Turner has provided us with a
12 recollection as it were of a conversation
13 she had with you in May of '93 in which you
14 and Dr. Turner discussed the question as to
15 whether this was a primary pancreatic or
16 primary breast or primary lung carcinoma.

17 In her description of that
18 conversation, she describes your observation
19 of infiltration of pancreatic tissue in
20 those slides.

21 A Yes, sir.

22 MR. YOUNG: I will object. Let me
23 object because I think you're done with that
24 question?

25 MR. OHLEMEYER: Yes.

1 MR. YOUNG: I think that's an
2 incomplete recitation of the testimony of
3 Dr. Turner.

4 Q Be that as it may, Dr. Kocoshis, we have
5 already established you observed an
6 infiltration of the pancreatic tissue in the
7 slides?

8 A That is correct, sir.

9 Q That observation is not contained in the
10 autopsy reports we have marked as Exhibits 1
11 or 3?

12 A That is correct.

13 Q And do you recall whether or if you observed
14 tumor involvement in the islets of
15 Langerhans in that pathology material?

16 A Your question is do I recall seeing tumor?

17 Q Did you observe tumor involvement of the
18 islets of Langerhans?

19 A Based upon my most recent review of the
20 slides -- can I start again?

21 Q Sure.

22 A Are you asking me did I know it back then?

23 Q Let me ask you this: Have you ever observed
24 tumor involvement in the islets of
25 Langerhans?

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1 Q Did you observe any tumor involvement in the
2 pancreatic ducts when you reviewed these
3 slides at any point in time?

4 A Not to my recollection.

5 Q What would the significance of that
6 observation be? Ductile involvement in the
7 pancreas?

8 A Ductile involvement, I believe, would be
9 more consistent with a primary carcinoma of
10 the pancreas -- not exclusively, but more
11 consistent.

12 Q In Exhibit 2, there is a letter that you
13 wrote to Dr. Turner dated May 13, 1993. And
14 I will hand it to you. And it says that you
15 observed, "...no evidence of pre-existing
16 pulmonary scars, which are claimed to be
17 predisposing factors for the development of
18 adenocarcinoma of the lung."

19 A Yes.

20 Q Do you recall how it came to be that you
21 either made that observation or reported it
22 to Dr. Turner?

23 A I believe I made this statement based upon
24 reviewing the gross protocol -- well, and
25 the microscopic slides and not seeing scars.

1 Q If there were granulomatous scars present in
2 her lung tissue but not sectioned for the
3 microscopy, obviously, you wouldn't have
4 observed it?

5 MR. YOUNG: I will object to the
6 form of the question.

7 Q Is it possible, Doctor, there were
8 granulomatous scars present in the lung
9 tissue that were not included in the
10 sections prepared at autopsy?

11 A That is possible.

12 Q Do you know whether there were radiological
13 or X-ray reports that described
14 granulomatous scarring in Mrs. Wiley prior
15 to her death?

16 A I believe -- well, I believe I have seen
17 radiological reports of scarring, although I
18 can't remember the details.

19 Q When and how and where would you have seen
20 them?

21 A I believe Mr. Jim Young brought to my
22 attention an MRI. And, again, I'm not
23 certain.

24 Q I take it Dr. Turner requested that you make
25 that observation?

1 A That is correct.

2 Q Did she tell you why she wanted you to do
3 that?

4 A My understanding or my recollection is that
5 she wanted to rule out as many or narrow
6 down the possible causes of the
7 adenocarcinoma of the lung.

8 Q For what purpose?

9 MR. YOUNG: Sorry, are you asking
10 what she told him?

11 Q Did she tell you why she wanted it done?

12 A I don't recall.

13 Q Did you form any impression or understanding
14 as to why she was asking you to do that?

15 A My impression was that she wanted or she --
16 well, she wanted to establish exposure to
17 smoke as a --

18 Q Cause of the cancer?

19 A As a cause of the cancer by ruling out other
20 potential causes.

21 Q What does the phrase "diagnosis of
22 exclusion" mean to you, if anything?

23 A It means when eliminating possible causes,
24 one is left with the only potential cause or
25 probable cause.

1 Q It's a process by which you exclude other
2 potential causes in an effort to establish a
3 possible etiology?

4 MR. YOUNG: I will object to the
5 form of the question which is really not a
6 question but testimony.

7 A That is correct.

8 Q Without actually demonstrating or
9 establishing specific facts that prove the
10 etiology?

11 MR. YOUNG: Same objection.

12 A Exactly.

13 Q I will hand you a letter written on
14 November 24th from you to Dr. Turner. It's
15 contained in Exhibit 2, a copy to Douglas
16 Triplett -- it's November 24, 1993 -- where
17 you describe your examination of iron stains
18 of four sections of lung on the autopsy.

19 A Yes, sir.

20 Q First of all, did you do the iron stains?

21 A Yes, I did.

22 Q At whose request?

23 A My understanding is it was Dr. Turner's
24 request.

25 Q Do you know why weren't stains like that

1 done in 1991?

2 A Apparently there was no concern at that
3 time. First of all, backing up, I don't
4 routinely do iron stains on every autopsy.
5 And at that time, specifically 1991, I don't
6 think there was a reason to suspect the
7 presence of asbestos bodies.

8 Q Do you routinely review pathology material
9 from a two-year-old autopsy to look for
10 pulmonary scarring?

11 A No.

12 Q So is it fair to say that your postmortem
13 involvement in this case was unique?

14 MR. YOUNG: I will object.

15 MR. OHLEMEYER: Let me rephrase the
16 question.

17 Q Was your postmortem involvement with
18 Dr. Turner in connection with this autopsy
19 typical or atypical?

20 A Atypical.

21 Q What technique did you use to iron stain the
22 lung tissue?

23 A The Perls' Prussian blue stain. I believe
24 that's P-E-R-L-S'. That's the name of the
25 chemical reaction. The specific name of the

1 technique is probably in the histology
2 procedure manual.

3 Q How sensitive is that technique for
4 quantifying the concentration of asbestos in
5 lung tissue?

6 MR. YOUNG: I guess I will object
7 to that. That's kind of a vague question.

8 A May I ask relative to --

9 Q I will ask a different question. Is the
10 purpose of that staining to detect the
11 presence of asbestos bodies or to quantify
12 the concentration or correlate that presence
13 with a presumed concentration of asbestos
14 bodies in the lung tissue?

15 MR. YOUNG: I will object to that
16 question. That assumes that the answer is
17 only one of two of those, one of those two.

18 MR. OHLEMEYER: I will rephrase the
19 question.

20 Q Doctor, what did you understand the purpose
21 of that exercise to be?

22 A To determine a semi quantification of the
23 number of asbestos bodies.

24 Q And what, if anything, did Dr. Turner tell
25 you she or anyone else wanted to do with

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A As I recall, if the asbestos bodies were present in unusual amounts, this would or could point to asbestos as a possible etiology of the cancer.

Q Can you describe for me the technique you used to examine the lung tissue under the microscope.

A Well, I can describe what I should have done according to Dr. Roggli. But I don't remember exactly.

Q So as we speak, you don't know how much of the entire section was screened under the microscope, do you?

MR. YOUNG: Object to the form of
the question.

A In all honesty, I cannot remember.

Q And you don't know whether you reviewed the sections on the microscope at moderately high magnification, 200x or higher?

A I can say for almost a certainty I did not examine under 200x because I don't have that particular setting on my microscope.

Q Did you suggest to Dr. Turner that lung tissue, wet tissue, could be sent to

2 | A Yes, I did in one of my letters, I believe.

7 A Based upon a book I have called "Directory
8 of Rare Analyses." I would be happy to
9 provide that for you. I have a copy of the
0 latest edition in my office.

13 | A Exactly.

15 | A Right.

19 MR. YOUNG: I object to the form of
20 the question.

24 | Q You don't do it routinely?

<http://legacy.library.ucsf.edu/tid/gzq07a00/pdf> <http://www.industrydocuments.ucsf.edu/docs/nphl0001>

1 Q If you were going to do it today or in '93,
2 you would go to a text to inform yourself as
3 to how it should be done?

4 A Yes.

5 Q I am asking because off the top of your
6 head, you couldn't go down to the lab and do
7 one without doing a little research on it?

8 A As a matter of fact, we don't do the test at
9 all here.

10 Q You send the tissue to someone else?

11 A Someone else. And I would have to find out
12 the specimen requirements.

13 Q Did your review of the iron stains eliminate
14 the possibility of significant asbestos
15 exposure in Mrs. Wiley's case?

16 A That's beyond the realm of my expertise.

17 Q Doctor, a couple more questions. Do you
18 know why -- I guess my question is: Do you
19 know whether the type of analysis we have
20 been talking about that you would send off
21 to Duke or to Dr. Roggli requires wet tissue
22 as opposed to dry tissue?

23 A I do not.

24 Q Do you know how to assess the significance
25 of any such finding after somebody does that

1 kind of analysis? I mean, do you know if
2 you sent the tissue off and they sent you
3 back the results and said there are so many
4 fibers per gram of wet tissue, would that
5 number have any meaning to you?

6 A No.

7 Q You mentioned at some point in this
8 discussion of missing blocks?

9 A That is correct, sir.

10 Q Describe and explain that for me.

11 A There are four blocks which are missing.
12 And, again, I'm determining that from
13 exclusion in one of the exhibits, there is a
14 list of blocks. And is it 3, 4, 7, 8 or
15 something like that that is missing and was
16 missing as of the date that they were sent,
17 that those blocks were sent. The remaining
18 blocks were sent.

19 Q They were missing at some point. When did
20 you determine they were missing?

21 A I don't recall exactly. The first time I
22 noticed they were missing, I did -- I knew
23 they were missing when they were sent in
24 1995, I believe, to Robert A. Cash.

25 Q So at the point where Robert A. Cash came

1 with the authorizations to obtain the
2 pathology material, you had already
3 determined that those blocks were missing?

4 A That is correct.

5 Q From where were those blocks taken in the
6 body?

7 A They were lung tissue as well as I believe
8 there was some pancreas on one of the
9 blocks.

10 Q I may have asked you this, but I want to
11 make sure the record is clear. Do you know
12 when those blocks were last accounted for?

13 A The only thing I can say is they were
14 accounted for at the time that some of the
15 slides were made because we have the slides
16 but not the blocks. And I don't know -- I'm
17 assuming it had to be before March 18th.
18 But what happened between March 18th and
19 after, I don't know.

20 Q Do you know whether anyone sent those blocks
21 off to have the tissue analyzed for the
22 presence of asbestos?

23 A I don't know for a fact, but it is possible.

24 Q Did you ever discuss that with Dr. Turner or
25 anyone else?

1 A Yes, I did.

2 Q And what is it that you recall about that
3 discussion?

4 A Well, I admitted to my chagrin that I didn't
5 have the blocks. And I didn't know what had
6 happened to them.

7 Q What did she tell you about the blocks?

8 A As I recall, she said well, she wasn't sure
9 about what happened to them either.

10 Q Did she suggest to you that someone had
11 either requested or intended to send them
12 off for some sort of analysis?

13 A Not to my recollection.

14 Q Do you know anything, Doctor, about the
15 analysis of genetic mutations and their
16 relationship to the diagnosis of disease or
17 the determination of its etiology?

18 A No, sir.

19 Q Do you as a pathologist observe any
20 pathological changes in the lungs of
21 cigarette smokers that you attribute to
22 their cigarette smoking besides those we
23 have already talked about, anthracosis or
24 bullous emphysema?

25 A May I clarify the question? As a direct

1 result of their smoking?

2 Q Sure. Although I don't understand the
3 distinction between indirect and direct.
4 Take your time.

5 A Microscopically, one can see what we call
6 macrophages that contain pigment within the
7 alveoli. I do not know, however, whether
8 this may be also caused by other factors.

9 Q So if you looked at that under a microscope,
10 you wouldn't say to yourself, with a
11 reasonable certainty, this person has a
12 history of cigarette smoking?

13 MR. YOUNG: I will object to the
14 form of the question.

15 Q Let me rephrase the question. If I
16 understand things and I were a pathologist,
17 I could look under a microscope at lung
18 tissue. And if I detected the presence of
19 diffuse interstitial fibrosis in proximity
20 to a certain number of asbestos bodies or
21 uncoated fibers, I would render a
22 pathological finding of asbestosis.

23 MR. YOUNG: I will object to your
24 question.

25 Q Is that a fair characterization of the

1 reasonable certainty I'm looking at lung
2 tissue from a cigarette smoker?

3 A In my opinion, no.

4 MR. OHLEMEYER: Doctor, I believe
5 those are all the questions I have. I
6 appreciate your patience. Thank you.

7 DIRECT EXAMINATION (continuing)

8 BY MR. WAGNER:

9 Q Doctor, my name is Richard Wagner. We were
10 introduced before. I'm one of the attorneys
11 representing R.J. Reynolds Tobacco Company
12 in the case. And I need to find Exhibit 2.

13 One question I had about the missing
14 slides was: Do I understand that all of
15 those slides were specimens taken at
16 autopsy?

17 A May I make a correction?

18 Q Sure.

19 A Missing blocks, paraffin blocks.

20 Q Sorry, I misspoke. With respect to the
21 missing paraffin blocks you have been
22 describing for us, do I assume correctly all
23 those were specimens taken at autopsy?

24 A That is correct, sir.

25 Q And in Exhibit 2, there is a note here -- I

1 guess I'd call it that -- dated September
2 14, 1993. And it says, "A set of slides on
3 autopsy #32-91, Mildred Wiley, was released
4 to Dr. N.C. Turner on September 14, 1993,
5 for delivery to Young and Riley, Attorneys
6 at Law. The release from the patient's
7 family is filed with the autopsy.

8 Dr. Douglas W. Shevlin reviewed the slides
9 before release." And typed is the name
10 Nancy Roderer, Word Processing, correct?

11 A Yes, sir.

12 Q And she was the person who handled this?

13 A Yes, sir.

14 Q And she is a secretary?

15 A Yes, sir.

16 Q And she works for you as well as other
17 people?

18 A That is correct.

19 Q Were the paraffin blocks missing when this
20 set of slides was sent on September 14,
21 1993?

22 A I don't know for a fact unless a -- if a
23 complete set of slides were sent at that
24 time, then my assumption is that the blocks
25 were in our possession shortly before, since

1 the slides had to have been made from those
2 blocks. And if a complete set of slides
3 were sent, then the complete set of blocks
4 were present.

5 Q Okay. Let's back up for just a moment.
6 Part of this is my ignorance of the process
7 here. Slides are made from the blocks?

8 A That is correct, sir.

9 Q And in the case of a request for a set of
10 slides such as depicted in this memorandum
11 dated September 14, 1993, do I assume
12 correctly that slides would have been made
13 from those blocks to send?

14 A In most cases, yes, sir.

15 Q That would be the typical routine?

16 A That is correct, sir.

17 Q With that understanding, tell me again
18 whether or not you believe that the blocks
19 were or were not missing at that time?

20 A Provided a complete set of slides were sent,
21 which I can't tell from that letter, then a
22 complete set of blocks were present.

23 Q Okay. There is now, of course, a set of
24 slides which you have reviewed from time to
25 time over the last couple three years,

1 right, that pertain to Mildred Wiley's case?

2 A I have not reviewed slides since at least
3 1995. The slides in Mr. Jim Young's
4 possession, there are two sets as I recall.
5 They were complete. And I don't know the
6 origin and the fate of those particular
7 slides.

8 Q When you say they were complete, do you mean
9 that the set of slides in Jim Young's
10 possession contain slides taken from the
11 missing paraffin blocks?

12 A That is correct.

13 Q I think you said the last time you examined
14 the set of slides was 1995; is that right?

15 A That would have been the last possible time
16 it could happen.

17 Q And at that time, to the best of your
18 recollection, there were slides in the set
19 that you examined that were taken from the
20 missing paraffin blocks?

21 MR. YOUNG: I think that misstates
22 what he said. So I will make that
23 objection.

24 A I'm trying to remember the last time I
25 looked at the slides if there was a complete

1 set that I looked at. I believe that the
2 last time I may have looked at the slides,
3 whatever was in our possession at that time
4 was not complete.

5 And I asked to see the blocks or asked
6 what happened to the blocks? I believe that
7 was the point at which I discovered that the
8 blocks were missing.

9 Q And the set of slides you are referring to
10 that you examined on this occasion that you
11 believe were incomplete were incomplete
12 because of what?

13 A They were not in sequence. For instance, as
14 I mentioned I believe 3, 4, 7, and 8 or
15 something like that.

16 Q Let me ask you this: Was that set that you
17 believe you examined that was incomplete,
18 incomplete because there were not slides
19 obtained from the missing paraffin blocks?

20 A As best as I understand.

21 Q But then just for clarification, there's a
22 set of slides presently here, here being
23 wherever you have access to them. And where
24 are those physically?

25 A The slides are kept -- well, there's a

1 warehouse. Let me back up a little bit. In
2 the basement of this hospital, autopsy
3 slides are generally kept for a number of
4 years along with the paraffin blocks. Does
5 that answer your question?

6 Q Yes. And so it's that set of slides that
7 you described for me that you have looked at
8 last?

9 A Those slides are no longer there. I want to
10 clarify that.

11 Q Where are they?

12 A I believe those are the slides -- well, I'm
13 not sure where they are.

14 Q I guess one of the questions I have in my
15 mind is how many sets of slides are there?

16 A I don't know. I don't know.

17 Q But you told me earlier -- and you correct
18 me if I am wrong -- that you believe that
19 the set of slides that Jim Young has are
20 complete and contain slides taken from the
21 missing paraffin blocks?

22 A That is correct.

23 Q But you believe that the set you looked at
24 last, which you think may have been about
25 1955, were not complete because slides were

1 not present that could have been taken from
2 the missing paraffin blocks?

3 A That is correct.

4 MR. OHLEMEYER: For the record, I
5 think you misspoke. I believe it's 1995.

6 MR. WAGNER: What did I say?

7 MR. OHLEMEYER: 1955.

8 MR. WAGNER: Correct my question to
9 1995.

10 Q So with that correction, what I just said is
11 correct; is that right?

12 A To the best of my knowledge.

13 Q Also in Exhibit 2 is a two-page document
14 that you have I think previously
15 identified -- let me show it to you for a
16 second -- as a search you made for
17 Dr. Turner?

18 A That is correct.

19 Q And what were you searching for?

20 A The relationship of environmental tobacco
21 smoke and lung cancer.

22 Q Just for the record, since this doesn't have
23 a separate exhibit number attached to it,
24 this is a two-page printout. It has a date
25 at the top of May 3, 1993, correct?

1 A That is correct.

2 Q And it has your handwriting at the top,
3 "Nicki, for your information. Thanks, Tom
4 Kocoshis," correct?

5 A Correct.

6 Q Did Dr. Turner ask you to make this search
7 for her?

8 A My assumption is that she did.

9 Q And would she have asked you to make that
10 search for her, say, within two weeks or so
11 of May 3, 1993?

12 A Probably, yes, sir.

13 Q Did she tell you why she wanted you to make
14 this search?

15 A I don't recall, sir.

16 Q How did you get the information that's in
17 these two pages?

18 A I asked the medical librarian. Actually, I
19 filled out a form requesting a literature
20 search. That would have been my usual
21 procedure. And the medical librarian
22 obtained this from I believe it's called
23 Midline or one of the others.

24 Q Why was it Dr. Turner asked you to do that?

25 MR. YOUNG: I will object. It asks

1 him to speculate about what Dr. Turner
2 thought.

3 A I don't recall.

4 Q Was this something she could have done
5 herself?

6 A Yes.

7 Q Did you actually obtain any of the articles
8 that are described in these two pages?

9 A I don't believe I did, sir.

10 Q Did Dr. Turner ever tell you what she
11 intended to do with the information that's
12 in those two pages?

13 A No, sir.

14 Q From anything that she said, did you form
15 any impression as to what she intended to do
16 with the articles set out on those two
17 pages?

18 A My assumption is it was regarding the
19 impending suit.

20 Q The lawsuit she was working on?

21 A That is correct, sir.

22 Q Now, as you previously testified, the
23 microscopic examination of the autopsy
24 specimens took place on March 18, 1993,
25 right?

1 A Or shortly before, yes, sir.

2 Q Or shortly before. Within a few days one
3 way or another of that particular date?

4 A It would have been before, yes.

5 Q It would have been before?

6 A Yes.

7 Q Do you remember what it was that caused that
8 microscopic examination to be made some time
9 after the gross examination report dated
10 June 24, 1991?

11 A I do not recall the specific precipitating
12 event.

13 Q Do you recall in general what the
14 precipitating event was?

15 A Usually it's due to a request from either
16 the family or parties involved, interested
17 parties, to have the autopsy finalized.

18 Q Well, do you have an independent
19 recollection as you sit here today what the
20 precipitating event was that caused that
21 microscopic examination to be made?

22 A No, I do not, sir.

23 Q I notice in Exhibit 2, Doctor, that there's
24 a letter to you from Attorney Tom Young
25 dated April 29, 1993.

1 A Yes, sir.

2 Q And he encloses a medical authorization
3 which authorizes you to discuss the matter
4 with him. He refers to an autopsy number.
5 He says that his understanding is you will
6 call him. And he says, "We may bring suit
7 against the tobacco companies. It is
8 Dr. Turner's opinion that Mildred Wiley's
9 cancer was caused by her exposure to
10 second-hand smoke. Our concern is that your
11 opinion, based upon reasonable medical
12 certainty, is consistent with her opinion,"
13 and so forth. Do you recall this letter?

14 A Yes, I do, sir.

15 Q And this letter is dated April 29, 1993,
16 which would indicate to me you would have
17 received that a short time before the date
18 of the microscopic examination of the
19 autopsy which is March 18, 1993. Would that
20 have been the precipitating cause?

21 MR. YOUNG: I will object. You
22 said before March? April is after March.

23 Q Sorry. I have misspoken. I have got my
24 dates mixed up here. Let me withdraw that
25 question.

1 The letter from Tom Young I just
2 described is dated April 29, 1993. The date
3 of the microscopic examination was March 18,
4 1993, or thereabouts, correct?

5 A Yes, sir.

6 Q Now, was the fact that the microscopic
7 examination might have had anything to do
8 with the lawsuit something that would have
9 precipitated the microscopic examination?

10 A It could have.

11 Q Do you have any kind of a recollection, now
12 that we have focused a bit on Mr. Young's
13 letter and all that, it was in fact a
14 precipitating cause?

15 A I don't have any specific recollection, sir.

16 Q I want to review my notes here a minute and
17 ask you some questions about some of the
18 matters that you discussed with
19 Mr. Ohlemeyer. So bear with me for just a
20 moment.

21 Did you ever examine microscopically
22 any of the pathological specimens that were
23 obtained during the time Mildred Wiley was
24 alive?

25 A I have.

1 Q Tell us what you have done in that respect,
2 if you can recall.

3 A To the best of my recollection, the first
4 time I saw those specimens was I believe a
5 few weeks ago when Mr. Jim Young brought the
6 slides to my office; and I looked at them
7 personally at that time.

8 Q Do you recall which specimens you looked at?
9 Was it all of them?

10 A I looked at every slide.

11 Q So you looked at all the brushings and the
12 washings?

13 A Yes, sir.

14 Q And the biopsies and so forth?

15 A Yes, sir.

16 Q Did you have a discussion with Mr. Young
17 about what your observations were?

18 A Yes, I did.

19 Q Did you meet with Mr. Young and discuss
20 those observations on more than one
21 occasion?

22 A The second time was shortly before this
23 deposition began.

24 Q And the first time was a few weeks ago?

25 A Yes, sir.

1 Q Was Mr. Young present when you were
2 examining the specimens?

3 A That is correct, sir.

4 Q You were looking through the microscope and
5 you were telling him what you were seeing?

6 A Yes, sir.

7 Q Can you relate for us the substance of what
8 that conversation was?

9 A As I recall, I remember seeing various
10 slides. I remember that there was one set
11 of slides from Daviess County in Indiana
12 that somehow seemed a little bit odd. It
13 may have been a salivary gland or some other
14 tissue that was not related to the case.
15 And I questioned what was the story behind
16 this, those particular slides.

17 Q Sorry, I don't mean to interrupt. Continue,
18 please.

19 A Mr. Jim Young did not know why those
20 particular slides were mixed with the other
21 slides. The slides from Daviess County were
22 mixed in with the slides from Marion and
23 from Ball Memorial Hospital.

24 Q Continue on and tell me again the substance
25 of what your conversation was with Mr. Young

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A I looked at some pap smears. I remarked -- I don't recall my exact words, but in general -- that I didn't see anything unusual. These were pap smears of vaginal or cervical pap smears. I recall mentioning I didn't see anything unusual in those.

I do remember seeing the various cytology specimens and surgical pathology specimens. I don't remember what I told Mr. Young, but I do remember thinking that they seemed to be consistent with what I had found at autopsy.

Q When you say they were consistent with what you found at autopsy, more specifically, how were they consistent with what you found at autopsy?

A I felt that they represented malignant cells that were consistent with an adenocarcinoma, which is what I had found at autopsy.

Q You also have in Exhibit 2 copies of the pathological reports that were generated by the pathologists who examined those same pathological specimens that were taken

1 during Mrs. Wiley's lifetime; is that
2 correct?

3 A That is correct, sir.

4 Q Let me ask you this question just as a sort
5 of general matter. From your examination of
6 those pathological specimens, did you see
7 anything that was inconsistent with what was
8 in the pathological reports, the written
9 reports?

10 MR. YOUNG: I will object. That's
11 pretty nonspecific as to which ones you are
12 talking about.

13 A I don't recall any specific inconsistencies
14 between what I had seen and what the reports
15 had stated.

16 Q Do you recall any general inconsistencies or
17 any inconsistencies even though you wouldn't
18 consider them to be specific?

19 A No, sir, I don't recall any.

20 Q What else did you and Mr. Young talk about
21 on that occasion?

22 A We discussed, as I mentioned before, the
23 definition of expert witness. I stressed to
24 Mr. Jim Young that I considered my expertise
25 limited to certain areas. We tried together

1 to define what those limitations were. We
2 discussed my rights as a witness, what I
3 could or could not do during a deposition.

4 I believe Mr. Jim Young asked me at
5 some point, the etiology, my opinion as to
6 the etiology of the adenocarcinoma in the
7 lung. And I told him that I felt that it
8 was beyond the realm of my expertise.

9 Q Have you now related to me the substance of
10 what your conversation was with Mr. Young on
11 that occasion?

12 A Pretty much.

13 Q Let me go back. These slides that you
14 examined on that occasion, some of which you
15 said came from Daviess County, do you mean
16 from Daviess County Hospital?

17 A Yes, sir.

18 Q Were those slides of specimens taken from
19 Mildred Wiley?

20 A I don't know that, sir.

21 Q Were they identified in some way that you
22 could look at them and say they were from
23 Daviess County Hospital?

24 A They were labeled as to Daviess County
25 Hospital. There was also a number, a

1 section number on there.

2 Q So there was a number, and Daviess County
3 Hospital was indicated. But they didn't
4 have the name Mildred Wiley on them?

5 A I don't recall.

6 Q Was it represented to you that they were
7 tissue specimens or specimens of some kind
8 taken from Mildred Wiley?

9 A That is the impression that I had.

10 Q And can you tell us, please, more
11 particularly what kind of pathological
12 specimens these were, from where they were
13 taken, and that sort of thing?

14 A I want to say salivary gland, but I'm not --
15 my recollection is a little bit foggy. I do
16 recollect they were not related to lung or
17 directly at least to lung or pancreas.

18 Q Did you say to Mr. Young while you were with
19 him on that occasion, "Where did you get
20 these slides?"

21 A Yes, to that effect.

22 Q That's what I would have thought. And what
23 did he say?

24 A He said, "I don't know." As I recall, he
25 was uncertain as to their source.

23 A It usually does. It will have a number like
24 500-95, the assumption being 95 being 1995
25 and 500 being the 500th slide or case in

1 that particular year.

2 Q Taken by a particular hospital or facility?

3 A Correct.

4 Q And do you remember from what you looked at
5 on that occasion, or any other occasion,
6 what the date was of those Daviess County
7 slides?

8 A I don't remember the date. It seems to me
9 it was quite -- it was a number of years
10 ago.

11 Q And when we speak of Daviess County
12 Hospital, we're talking about Daviess
13 County, Indiana?

14 Do you know there is a Daviess County
15 Indiana?

16 A I am sure there is a Daviess County,
17 Indiana. I know there is a Jo Daviess
18 County, Illinois. Who knows how many
19 Daviess Counties there are? But I don't
20 remember if it says Daviess County, Indiana
21 or just Daviess County.

22 Q I suppose that's correct. There could be a
23 Daviess County in some other state. You
24 don't know what Daviess County it was,
25 right?

1 A Right, sir.

2 Q When you commented to Mr. Young that you
3 thought you observed a neoplasm in these
4 Daviess County slides, what else did you and
5 he say about that particular observation?

6 A I remember that Mr. Jim Young mentioned the
7 fact I don't know where those -- well, that
8 he wasn't sure of the origin of those slides
9 or how those slides happened to be in the
10 box.

11 Q Go ahead.

12 A I don't remember if there was a report. I'm
13 assuming there was a report, but I don't
14 remember.

15 Q You mean a written report?

16 A A written report.

17 Q By a pathologist that related to those
18 particular slides?

19 A That's correct. But I don't recall for
20 sure.

21 Q There could have been or there could not
22 have been as you sit here today; is that
23 what you're saying?

24 A That is correct.

25 Q And if I asked you what was in the written

1 report, could you tell me?

2 A No, sir, I couldn't.

3 Q The slides from I think you said Marion, do
4 you mean Marion County Hospital?

5 A The slides that I'm referring to were
6 from -- I believe some were from Marion
7 General Hospital. There may have even been
8 some from Marion V.A. I think for some
9 reason, I vaguely remember the pap smears as
10 having the label Marion V.A., the cervical
11 pap smears as being from Marion V.A.

12 Q Let's focus for a moment on the slides from
13 Marion General Hospital.

14 A Yes, sir.

15 Q How many of those were there?

16 A How many? I don't recall the exact number,
17 sir.

18 Q Let me ask you the same question about the
19 Daviess County slides. How many of those
20 were there?

21 A I would estimate four, five perhaps.

22 Q And you don't remember how many Marion
23 General Hospital slides there were; is that
24 what you're saying?

25 A That's correct. I do recall vaguely there

1 were more Marion general slides than there
2 were of the --

3 Q Daviness County?

4 A -- of the Daviness County.

5 Q And what particular specimens were in the
6 Marion slides?

7 A As I recall, they were the results of a
8 bronchoscopy. Whether they were brushings
9 or washings or both, I don't recall the
10 specifics.

11 Q Did you determine in some fashion that they
12 pertained to Mildred Wiley? Or could you I
13 should say by looking at the slides
14 themselves?

15 A Yes. And I don't remember exactly how. I
16 assume I did it by comparing the number on
17 the slides with the number on the report.

18 Q And what report are you referring to?

19 A The pathologist's report.

20 Q What was the name of the pathologist?

21 A I don't recall that.

22 Q Do you remember the date of the report?

23 A I don't recall that either.

24 Q What you recall looking at in conjunction
25 with those slides was a report by a

1 pathologist who had examined the same
2 slides, correct?

3 A That is correct, sir.

4 Q And do you recall whether or not that
5 examination was done in connection with or
6 for a Dr. Patel, P-A-T-E L?

7 A The name is familiar. And I believe that
8 was the name of the clinician or the
9 ordering physician for that particular
10 procedure.

11 Q Now, did you discuss your observations with
12 Mr. Young on that occasion of those slides
13 that we're now referring to?

14 A I believe that I did, that I mentioned the
15 fact that I thought or I agreed with the
16 pathologist.

17 Q Let me show you a pathology report, first of
18 all, and ask you if that's the one you are
19 referring to?

20 A Yes, I thought there might have been more
21 than one report in addition to this.

22 MR. WAGNER: Let's mark this as the
23 next exhibit.

24 (Defendant's Exhibit(s) 4 marked for
25 identification.)

1 Q Doctor, I have asked the reporter to mark
2 the document you and I were just discussing
3 as Exhibit 4. And Exhibit 4 is at least one
4 of the pathological reports you were
5 referring to that you looked at when you
6 were examining the slides from Marion
7 General Hospital, correct?

8 A That is correct.

9 Q And I believe you told me that from your
10 examination of those slides, you agreed with
11 what was set out in the report, which is
12 Exhibit 4; is that correct?

13 A That is correct, sir.

14 Q Now, the slides you looked at on this
15 occasion a few weeks ago when you and
16 Mr. James Young were together that we've
17 been talking about here thus far that were
18 the Ball Memorial Hospital slides, I want to
19 focus on those for just a moment.

20 A Yes, sir.

21 Q Now, you'll have to forgive me for asking
22 this question again. But was that set of
23 slides you looked at, were those slides that
24 were slides from the autopsy as well as
25 slides taken during Mildred Wiley's

1 lifetime, right?

2 A That is correct.

3 Q And with respect to the autopsy slides, was
4 that a complete set or were some missing
5 because of the missing paraffin blocks?

6 A There were, to the best of my recollection,
7 two complete sets. For whatever reason, I
8 believe that one set -- well, let me back
9 up. There couldn't have been two complete
10 sets because in one set of slides, I believe
11 there were -- I don't remember the exact
12 number, but there was one more slide than
13 the other set.

14 However, both of those sets contained
15 the slides from the paraffin blocks in
16 question, the "missing" paraffin blocks.
17 Did I make myself clear?

18 Q Let me ask the question that way. So then
19 that set of slides that we're talking about
20 was complete in the sense that there were no
21 slides missing because of the missing
22 paraffin blocks?

23 A That is correct. And, again, there were two
24 sets.

25 Q Two complete sets?

- 1 A Two, with regard to those four paraffin
2 blocks, yes, sir.
- 3 Q In June of 1991, which was the month during
4 which Mildred Wiley was treated at Ball
5 Memorial Hospital as you may recall, did you
6 ever examine any of the pathological
7 specimens that were obtained from Mildred
8 Wiley during her lifetime while she was
9 being treated?
- 10 A To the best of my recollection, no.
- 11 Q I want to ask you some questions about, for
12 wont of a better word, the process,
13 pathological processes that were available
14 in the hospital at that time.
- 15 A Yes, sir.
- 16 Q Was electron microscopy something that could
17 have been used at Ball Memorial to examine
18 those pathological specimens in June of
19 1991?
- 20 A I don't recall because I know that we now
21 have access to electron microscopy. I don't
22 know in June of 1991.
- 23 Q You just don't recall one way or another?
- 24 A That is correct.
- 25 Q Was -- and I hope I don't mess this word up

23 Q Do you recall whether or not in June of 1991
24 in examining pathological specimens, that
25 they were examined to see whether or not

1 they produced surfactant?

2 A Do I recall if they were done or could have
3 been done?

4 Q Well, could it have been done at that time?

5 A Not here.

6 Q In June of 1991, was it possible for
7 pathological specimens to be examined for
8 the presence of elements of desmoplasia?

9 A Elements of desmoplasia. In my
10 interpretation of that term, desmoplasia
11 refers to the proliferation of certain cells
12 in response to tumor. If I understand your
13 question correctly, that could have been
14 determined microscopically with the routine
15 light microscope.

16 Q So that could have been done in June of
17 1991?

18 A That is correct.

19 Q Do you know whether or not that was done in
20 fact with respect to any pathological
21 specimens taken from Mildred Wiley while she
22 was still alive?

23 A Again I hope we're talking about the same
24 thing. My understanding of what you're
25 saying, elements of desmoplasia, it could

1 have been done on the -- again, the tissue I
2 believe she had a chest wall biopsy. And it
3 could have been looked for on that.

4 Q Do you know whether, in fact, it was?

5 A I don't recall.

6 Q Were any of Mildred Wiley's organs preserved
7 after the autopsy?

8 A Yes, sir.

9 Q And are they still available someplace?

10 A No, sir.

11 Q They have all been destroyed?

12 A That's correct, sir, incinerated.

13 Q I believe, Doctor, that you testified that
14 from your microscopic observations of the
15 tissues taken at autopsy, that you
16 determined that there was in fact a cancer
17 in Mildred Wiley's pancreas?

18 A That is correct, sir.

19 Q And was that an adenocarcinoma?

20 A That is correct, sir.

21 Q And that particular observation in fact for
22 some reason did not make its way into the
23 autopsy report we have established; is that
24 correct?

25 A That's correct.

1 Q And that was an omission of some kind?

2 A That's correct.

3 Q When was it that you became aware of the
4 fact that that particular observation by you
5 had been left out of the autopsy?

6 A The first time that I can recall was two
7 weeks ago; that when I reviewed the slides
8 in the presence of Mr. Jim Young, I remember
9 thinking this should have been noted in the
10 autopsy report. It was not.

11 Q So you passed that information along to
12 Mr. Young. Was that in the second meeting
13 that you had with him that you described for
14 me earlier?

15 A I believe it was the first.

16 Q In the first one when you were looking at
17 the slides and including the Daviess County
18 slides and all that; is that right?

19 A That is correct.

20 Q And when you told Mr. Young that on that
21 occasion, can you tell us more completely
22 what you said and what he said in that
23 respect?

24 A Again, I don't have a verbatim recollection.

25 Q Sure, just the substance as you can recall

1 it.

2 A That there appears to be adenocarcinoma in
3 the pancreas and something to the effect:
4 Oops, it should have been noted in the
5 report.

6 Q Anything other than that you can recall
7 talking about with respect to that
8 particular subject on that particular
9 occasion?

10 A We talked about the retrograde flow,
11 lymphatic flow, and its implications in
12 regard to the possibility of having
13 metastases in the pancreas from the lung.

14 Q What did you say about that possibility?

15 A I said that is fairly common.

16 Q That what is fairly common?

17 A That it's fairly common for metastases to
18 occur in or around the pancreas due to
19 retrograde flow of lymph from the lung
20 bringing tumor cells down into the region of
21 the pancreas.

22 Q Did you also discuss whether or not it was
23 common for an adenocarcinoma that was
24 primary to the pancreas to metastasize to
25 the lung?

25 | A I don't recall specifically.

1 Q Do you recall ever discussing the
2 observation that you made that there was
3 adenocarcinoma present in the pancreas of
4 Mildred Wiley with Dr. Songer?

5 A I don't believe that I ever discussed to my
6 memory the autopsy findings directly with
7 Dr. Songer. I don't recall any such
8 instance where I did.

9 Q When I look at the letters from Tom Young
10 that we looked at earlier dated April 1993,
11 the microscopic examination which took place
12 that's reflected in the autopsy report of
13 March of 1993, and some of the other
14 documents and conversations that you have
15 related to us that you've had with Nicki
16 Turner, Dr. Turner; having thought about all
17 that, wouldn't it have been likely that
18 after you did the microscopic examination of
19 the autopsy specimens in March of 1993, that
20 you would have discussed with Dr. Turner
21 what your observations were, especially the
22 fact that you found an adenocarcinoma in the
23 pancreas?

24 MR. YOUNG: I will object to the
25 question. It's really not a question.

1 Q Let me embellish the question with one more
2 fact. And that is remembering also she had
3 stressed with you the importance of the
4 autopsy to the lawsuit that she was working
5 on.

6 A Uh-huh.

7 Q With all those facts and summarizing what I
8 think is in the record at this point, my
9 question is: Wouldn't it have been likely
10 that you would have discussed with
11 Dr. Turner that observation, about finding
12 adenocarcinoma in the pancreas?

13 MR. YOUNG: I will object to the
14 recitation and testimony of counsel. It's a
15 compound question, and it's improper in
16 form.

17 Q You can answer, Doctor.

18 A I think it is likely that I would have
19 discussed that.

20 Q After you reviewed the slides, looked at the
21 slides microscopically along with Mr. James
22 Young being present and had your
23 conversations with him a few weeks ago as
24 you described to me, following that
25 particular meeting with Mr. Young, did you

1 have any conversations with Dr. Turner about
2 what your observations were with respect to
3 the slides that you looked at on that
4 occasion?

5 A I did not.

6 Q Now, you mentioned to me you had another
7 meeting and conversation with Mr. James
8 Young after that meeting, right?

9 A That is correct.

10 Q And that occurred when, a couple weeks ago?

11 A Today.

12 Q Today?

13 A Yes.

14 Q Before this deposition started?

15 A Yes.

16 Q And that's the one I think Mr. Ohlemeyer
17 already covered with you; is that right?
18 Did you go over anything with him at this
19 meeting?

20 A I did review a few slides, some slides of
21 lung tissue as I recall and pancreas.

22 Q Let's focus on that. What time did that
23 meeting start?

24 A Mr. James Young was here about 12:10, 12:15,
25 something like that.

1 Q And was anyone else present besides you and
2 Mr. James Young?

3 A No. May I say we did go to lunch. I'm
4 trying to remember if I looked at the slides
5 before lunch or after lunch. I believe I
6 looked at the slides after lunch.

7 Q This deposition started about 1:30 or so, or
8 a little past that, I guess, 1:45 p.m. or so
9 today. And so you would have looked at the
10 slides at about what time?

11 A Oh, approximately we will say 1:00.

12 Q Now, what time did you and Mr. Young first
13 meet?

14 A Today?

15 Q Yes, sir. This is all about your meeting
16 today.

17 A Approximately 12:15 or 12:10.

18 Q And you went to lunch?

19 A That's correct.

20 Q Is that the first thing you did?

21 A He came in. We had a brief discussion.

22 Q What did you talk about?

23 A I think we discussed my rights again as a
24 witness and or the definition of an expert
25 witness, and then I believe we went to

1 lunch. And we came back, and I looked at
2 the slides.

3 Q Now, how many slides did you look at?

4 A I looked at actually at least four.

5 Q And you looked at them microscopically, I
6 take it?

7 A Yes, sir.

8 Q What tissue or what specimens were in those
9 slides?

10 A There was lung and pancreas. There was also
11 skeletal muscle in one of the slides. I
12 might want to remind or note that oftentimes
13 we put two different types of tissue on the
14 same slide, so the number of tissues may not
15 correspond exactly to the number of slides,
16 different tissues.

17 Q So you recall looking at lung, pancreas,
18 skeletal, what else?

19 A Lymph node.

20 Q What else?

21 A That's all I can recall.

22 Q Why was it you were examining the slides on
23 this second occasion or those slides on this
24 second occasion?

25 A I wanted to see if there was anthracotic

1 pigment in the stroma of the tumor of the
2 lung. I also wanted to verify the fact that
3 we're trying to determine where the lymph
4 node was from and why there may have been a
5 discrepancy between my statement of a
6 peripancreatic lymph node grossly and what
7 was present microscopically.

8 Q What was that discrepancy in particular?

9 A Grossly, I said there appears to be a
10 peripancreatic lymph node that is involved
11 with tumor as stated in the report. That
12 may not be the exact words.

13 Q You are referring to what was said in the
14 autopsy report about the peripancreatic --

15 A Lymph node, what I thought was a
16 peripancreatic lymph node at that time as a
17 gross examination. However, micro-
18 scopically, I found out what I believe
19 happened was this was, in fact, pancreatic
20 tissue involved by tumor rather than a
21 peripancreatic lymph node. I don't know if
22 I'm making myself clear or not.

23 Q Do I understand that from looking at the
24 slides again, you determined that the tissue
25 specimen you were looking at was really of

1 the pancreas, itself, as opposed to the
2 peripancreatic lymph node; is that right?

3 A Exactly, yes, sir.

4 Q Now, Doctor, just so I understand what your
5 testimony is, I'm going to give you
6 Exhibit 1 which is the autopsy report as we
7 have identified it earlier. And on page 3
8 at the top, it says, "There is a possible
9 metastatic tumor in the peripancreatic lymph
10 nodes identified."

11 And then over on page 4, under the
12 heading Pancreas, there is a sentence here
13 that says, "A peripancreatic lymph node is
14 replaced by metastatic tumor with features
15 similar to that described in the lung"; is
16 that right?

17 A That's what is written.

18 Q Do I understand your testimony that those
19 words are really in error; is that right?

20 A That is correct, sir.

21 Q And then the error is what?

22 A The error is that this was not, in fact, a
23 peripancreatic lymph node, but was the
24 pancreas, which contained what I believed to
25 be -- what I believe now to be metastatic

1 tumor.

2 Q That's the same adenocarcinoma that was
3 present in the pancreas itself that we have
4 discussed earlier here in your deposition?

5 A Yes, sir.

6 Q Which could have been, in your opinion,
7 either a metastases to the pancreas from the
8 lung or could have been the primary that
9 metastasized to the lung?

10 MR. YOUNG: I will object to the
11 form of the question.

12 A My opinion is that it is more probably a
13 metastasis to the pancreas from the lung.
14 That is my opinion.

15 Q You told me earlier you can't rule out the
16 possibility or the probability that there
17 was a primary in the pancreas itself which
18 metastasized to the lung; is that correct?

19 MR. YOUNG: I object to the form of
20 the question. I think it misstates his
21 prior testimony.

22 A I can't rule out the possibility.

23 Q Let me go back again now to this occasion we
24 were discussing when you were looking at
25 these slides today --

1 A Yes, sir.

2 Q -- with Mr. James Young. He had brought
3 these slides to you, and I asked you why you
4 were looking at them. And I believe you
5 said that you wanted to look at the lung
6 tissue. Tell me once again, you wanted to
7 look at it for what purpose?

8 A I wanted to see if there was anthracotic
9 pigment in the stroma of the tumor.

10 Q And what was it that prompted you to want to
11 examine the slide for that purpose?

12 A I recalled a statement made by Carlos,
13 C-A-R-L-O-S, Bedrossian, B-E-D-R-O-S-S-I-A-N
14 in a seminar I attended I believe in 1995,
15 during which he stated that if one sees
16 anthracotic pigment within the stroma of the
17 tumor, that was a good indication that the
18 tumor was primary. In the lung we're
19 talking about.

20 Q And why would that be so?

21 A I'm trying to remember Dr. Bedrossian's
22 reasoning for that. I can't address that as
23 to his reasons. I don't recall his specific
24 reasons.

25 Q What observations did you make in that

1 respect when you looked at the lung tissue
2 specimen today?

3 A I was unable to demonstrate anthracotic
4 pigment within the stroma of the tumor.

5 Q Which would be then a negative in the sense
6 of showing that she had a primary tumor in
7 the lung?

8 MR. YOUNG: I will object to the
9 form of that question because I think it
10 overstates and misstates the testimony.

11 Q Correct?

12 A That is correct, based on that criteria,
13 yes, sir.

14 Q Now, you also wanted to verify something --
15 my notes are a little sketchy -- about where
16 the lymph node was from or something?

17 A That is correct.

18 Q Tell me what that was all about.

19 A Because I don't have or did not retain the
20 block list, I wasn't sure where the lymph
21 node came from, the lymph node that was in
22 the set of slides that Mr. Jim Young had.

23 Looking at the slide, however, I
24 determined the fact that this lymph node was
25 in contiguity with the lung tissue and was

1 most probably what we call a hilar lymph
2 node, a lymph node at the root of the lung.
3 And this lymph node had tumor, metastatic
4 tumor, in it.

5 Q So you determined that the particular slide
6 you were examining was tissue from the hilar
7 lymph node; is that what you are telling us?

8 A Correct.

9 Q And you observed tumor in it?

10 A Yes.

11 Q And was there an adenocarcinoma?

12 A Yes, sir.

13 Q Or could you tell?

14 A It was an adenocarcinoma, sir.

15 Q What did you conclude from that, if
16 anything?

17 A That to me was a criterion in favor of being
18 a lung primary. The fact there was tumor in
19 a hilar lymph node would be more probable
20 for a lung primary than for a pancreatic
21 primary.

22 Q What else could produce a cancer in a hilar
23 lymph node other than a lung primary?

24 MR. YOUNG: I will object to the
25 form of the question.

1 Q First of all, a pancreatic primary could,
2 correct?

3 MR. YOUNG: Object to the form of
4 the question.

5 A It is a possibility.

6 Q What else could have produced it?

7 A Actually, a cancer from adenocarcinoma from
8 another organ besides pancreas.

9 Q Actually, an adenocarcinoma from almost any
10 other organ could have produced it; isn't
11 that correct?

12 A Could have.

13 Q Breast?

14 A Rarely.

15 Q But it could have?

16 A Could have.

17 Q Do you know, Doctor, as you sit here today
18 what the statistics are with respect to
19 whether or not it's more common for a
20 primary adenocarcinoma of the pancreas to
21 metastasize to the lung as opposed to a
22 primary adenocarcinoma of the lung
23 metastasizing to the pancreas?

24 MR. YOUNG: I will object. That's
25 been asked and answered.

1 A I don't remember the statistics.

2 Q And if those statistics were present in one
3 of the works on cancer that you would deem
4 to be authoritative, would that have some
5 impact, do you believe, upon your opinion as
6 to whether or not Mildred Wiley had a
7 pancreatic primary cancer?

8 A It would be a factor.

9 Q What else did you and Mr. Young discuss
10 during this meeting that you had today that
11 we have not touched upon up to this point?

12 A Nothing that I haven't already mentioned
13 that I can recall.

14 Q I think when you were discussing the subject
15 of the autopsy with Mr. Ohlemeyer, you and
16 he talked about the fact that autopsies are
17 done for different purposes.

18 A Yes, sir.

19 Q Doctor, wasn't it your understanding that
20 the autopsy of Mildred Wiley was done for
21 the purpose of being used in the civil suit
22 against the tobacco companies that Nicki
23 Turner was describing to you?

24 MR. YOUNG: I will object to the
25 form of the question.

1 A I believe that association came up during my
2 conversations with Dr. Turner at or shortly
3 after the autopsy.

4 MR. WAGNER: Off the record.

5 (Discussion off the record).

6 Q Let me show you, Doctor, Exhibits 1 and 3
7 again just for a moment.

8 A Yes, sir.

9 Q Exhibit 1 being the final autopsy, a more
10 complete autopsy report, even though it's
11 erroneously entitled Preliminary Autopsy
12 Report, correct?

13 A That's correct.

14 Q And Exhibit 3 being the preliminary, the
15 real preliminary autopsy report; is that
16 correct?

17 A That is correct, yes, sir.

18 Q Let's look at 3 here for just a moment.
19 Exhibit 3 says in part, "Permission for the
20 autopsy is granted by the deceased's
21 husband, Mr. Wiley, and is restricted to the
22 chest and abdomen." Do you see that?

23 A Yes, sir.

24 Q And Exhibit 1 says on page 3, "Due to
25 autopsy restrictions obtained after

1 telephone conversation with the deceased's
2 husband, the brain was not examined." Do
3 you see that?

4 A Yes, sir.

5 Q Those two statements appear to be not the
6 same and somewhat inconsistent to me. Do
7 you know why that is?

8 MR. YOUNG: I will object whether
9 they are inconsistent.

10 Q Withdraw the question. Do you find those
11 two statements to be inconsistent?

12 A I do not.

13 Q And why not?

14 A Because I think that the autopsy involves
15 typically brain or cranial contents, chest,
16 and abdomen. And in one, it says the brain
17 has been excluded. The other it says it's
18 been restricted to the chest and abdomen.

19 Q But if only the brain was not to be
20 examined, then, for example, the breasts
21 would have been examined, right?

22 A That is true. This did not exclude
23 examination of the breasts.

24 Q Does the statement, in your opinion,
25 "...restricted to the chest and abdomen,"

1 restrict examination or keep from having
2 examination at autopsy of the breast?

3 A No, it does not.

4 Q If we put those two statements together, can
5 you tell us why the breasts were not
6 sectioned at autopsy?

7 MR. YOUNG: I will object. That's
8 been asked and answered. A long discussion
9 was had about that earlier in the day.

10 A Because it is not my usual practice to go
11 beyond palpation of the breasts.

12 Q Just as a matter of routine, you don't
13 section and take specimens from the breasts;
14 is that correct?

15 A That is correct, sir.

16 Q Would that be your routine in the case of a
17 patient who had an elevated marker that
18 indicated the presence of breast cancer and
19 who was treated for breast cancer?

20 MR. YOUNG: Objection, asked and
21 answered. That's exactly what Mr. Ohlemeyer
22 covered already.

23 A I would do it upon the specific request of
24 the physician, of the clinician.

25 Q I asked a little different question. Would

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1 resident was performing the autopsy -- do
2 you together with him microscopically
3 examine the tissue?

4 MR. YOUNG: Objection, asked and
5 answered.

6 A That is correct. Yes, we do.

7 Q And do you routinely also grossly examine
8 the body and the parts taken from the body?

9 MR. YOUNG: Objection, asked and
10 answered.

11 Q Or is that something that you would stand
12 off to one side and watch the resident do?

13 A Let me clarify that. We would examine
14 together the gross findings, usually at the
15 completion of the autopsy, the gross organs
16 I should say.

17 Q During the autopsy of Mildred Wiley's body,
18 was anyone else present at any time, either
19 to your personal knowledge or if you have
20 ever heard that anyone else was present?
21 Can you tell us that? That's a really
22 terrible question. Do you know what I'm
23 asking?

24 A I know the diener or assistant was present,
25 Brad. I'm assuming -- can I withdraw my

1 answer?

2 Q Sure. Let me withdraw the question, so the
3 record is a lot more clear.

4 Do you know or have you ever heard
5 whether or not anyone else was present
6 during Mildred Wiley's autopsy other than
7 Dr. Wolaniuk and you?

8 A The morgue assistant. And I do not remember
9 the presence of any other persons at that
10 time.

11 Q The morgue assistant is routinely present;
12 is that a correct statement?

13 A Yes, sir.

14 Q Does a morgue assistant do anything during
15 the autopsy that contributes to the autopsy?

16 A Yes, sir. He actually removes most of the
17 organs from the body cavities and then hands
18 them to the resident who makes the weights,
19 makes the initial gross examinations,
20 records any abnormalities, and then saves
21 these organs for me to review or other staff
22 as the case maybe.

23 Q Do you know who had the conversations with
24 Mrs. Wiley's husband that restricted the
25 autopsy?

- 1 A I did not. I believe Dr. Wolaniuk -- let me
2 say he obtained this information somehow. I
3 don't know if he obtained it directly from
4 Mr. Wiley or through an intermediary. I do
5 not know.
- 6 Q Do you know whether or not or have you ever
7 heard that those restrictions were conveyed
8 to Dr. Wolaniuk by Dr. Turner?
- 9 A I don't know that for a fact.
- 10 Q Have you ever heard that that was the case?
- 11 A Not that I recall.
- 12 Q Now, Exhibit 3 -- and I think I know the
13 answer. But Exhibit 3, which is the
14 preliminary autopsy report, says, "A section
15 of lumbar spine will be examined
16 microscopically to determine the presence or
17 absence of bone metastases."
- 18 Do I understand your testimony that in
19 fact was done?
- 20 A It was done.
- 21 Q And there are actually pathological
22 specimens?
- 23 A There are slides, yes, sir.
- 24 Q Do you agree, Doctor that among women in the
25 United States, breast cancer is the most

1 common cancer?

2 A To the best of my knowledge, yes, sir.

3 Q Do you agree, Doctor, fibrocystic breast
4 disease is an established risk factor for
5 breast cancer?

6 A Some forms are.

7 Q What forms are?

8 A Those in which there is hyperplasia within
9 the ducts, which is a form of fibrocystic.

10 By the way, I don't mean to be
11 pedantic. The term "fibrocystic change" is
12 in the breast rather than fibrocystic
13 disease because it may be a number of
14 conditions.

15 But duct hyperplasia is associated with
16 an increase. Without what we call atypia,
17 it is associated with a slightly increased
18 risk of 1.5 to 2 times in normal women.

19 Q I want to ask you a question about sputum
20 cytology for a moment. Is that something
21 you are familiar with?

22 A I'm familiar with it. I don't claim great
23 expertise in that area in general.

24 Q Let me ask you whether or not you agree with
25 this statement; that once disease is

1 suspected, a simple effective method of
2 obtaining a positive diagnosis of lung
3 cancer is sputum cytology. Would you agree
4 with that statement?

5 MR. YOUNG: Let me interpose an
6 objection. If you're going to read various
7 parts of literature to the witness, maybe we
8 can have a continuing objection so I don't
9 keep interrupting you. I think it's
10 improper to read these statements out of
11 context and ask for the doctor to comment on
12 them.

13 MR. WAGNER: You may have a
14 continuing objection.

15 Q You understand, Doctor, I'm just reading to
16 you something. And I want to know whether
17 you, in your professional opinion, agree or
18 disagree with that particular statement.

19 A Yes, sir. Would you repeat it?

20 Q Once the disease is suspected, a simple and
21 effective method of obtaining a positive
22 diagnosis of lung cancer is sputum cytology?

23 A I would qualify it. I don't think it's
24 always simple, but it is effective.

25 Q With respect to the subject of bronchoscopy,

1 Doctor, would you agree that the diagnostic
2 yield of fiberoptic bronchoscopy with
3 cytology brushings and biopsy for histology
4 when a visible lesion is identified is
5 higher than 90 percent?

6 A That I consider beyond the realm of my
7 expertise.

8 Q Here is a statistic which you may or may not
9 be familiar with. If you're not, you can
10 tell me. Tell me whether or not you agree
11 with it. The statement is that

12 endobronchial metastases are seen in
13 approximately 28 percent of patients?

14 A I don't have enough information to say yea
15 or nay.

16 Q Doctor, isn't it a fact that breast cancer
17 is a tumor most often associated with
18 metastatic bone disease?

19 A Yes.

20 Q Would you agree, Doctor, that physical
21 examinations of the breast, mammograms, can
22 fail to find small tumors present in the
23 breast?

24 A That is correct, sir.

25 Q Would you agree the two organs from which

1 cancer is mostly commonly metastasized to
2 the lung are the breast and the pancreas?

3 A I don't know.

4 Q You are familiar with or at least generally
5 familiar with the medical records pertaining
6 to Mildred Wiley's treatment at Ball
7 Memorial Hospital, I take it, correct?

8 A Yes, sir.

9 Q She was a patient who presented with
10 multiple sites of cancer? Would you agree
11 with that?

12 A I don't recall that specific detail. My
13 impression was she presented with back pain
14 initially anyway.

15 Q Do you recall the bone scan that was done?

16 A Let's see. I believe I remember an MRI, but
17 I don't remember a bone scan.

18 Q Do chest wall lesions commonly occur with
19 breast cancer?

20 A I believe they do, sir.

21 Q And would a chest wall lesion be one and the
22 same thing as the lesion that was excised
23 from Mildred Wiley's left chest wall?

24 A Yes, sir.

25 MR. WAGNER: Off the record.

1 (Discussion off the record).

2 DIRECT EXAMINATION (continuing)

3 BY MR. OHLEMEYER:

4 Q Doctor, do you know anything about the
5 possibility of the frequency with which
6 breast cancers metastasize to the pancreas
7 or pancreatic cancers metastasize to the
8 breast?

9 A I do not.

10 MR. WAGNER: Let us take a brief
11 recess, and we will see if we can wind
12 things up here.

13 (A brief recess was taken.)

14 MR. WAGNER: I have no further
15 questions.

16 MR. OHLEMEYER: Nor do I, Doctor.
17 Thank you.

18 CROSS-EXAMINATION

19 BY MR. YOUNG:

20 Q I want to cover two things with you, Doctor.
21 When we met this morning and you reviewed
22 some of these slides, that was not at my
23 request to do that, was it?

24 A That is correct. It was not at your
25 request.

1 Q And when we met before so that you could
2 look at the slides, you wanted to be able to
3 look at the slides so you would be prepared
4 for the deposition today?

5 A Yes, sir.

6 Q And when you were talking about the cytology
7 slide from Daviess County, I think your
8 testimony was that I was not aware of where
9 that was from.

10 A At that time.

11 Q And in fact I have never made any
12 representation to you that that was in fact
13 Mildred Wiley's slide, have I?

14 A Other than the fact that the slide was with
15 the other slides.

16 Q The only representation is the physical
17 location of the slide being in the box?

18 A Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. WAGNER:

21 Q The only thing I understand, Doctor, in that
22 respect is when Mr. Young brought the slides
23 to you, the Daviess County Hospital slides
24 were all together with all the other slides
25 that related to Mildred Wiley; is that

1 right?

2 A That's correct, sir.

3 MR. WAGNER: I have no further
4 questions.

5 MR. FURR: No questions.

6 (Defendant's Exhibit(s) 5 marked for
7 identification.)

8 (Deposition concluded at 6:20 p.m.)

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THOMAS A. KOCOSHIS, M.D.

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STATE OF INDIANA)
)
COUNTY OF MARION)

I, Thomas A. Richardson, a Notary Public in and for said county and state, do hereby certify that the deponent herein was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter;

That the foregoing deposition was taken on behalf of the defendants; that said deposition was taken at the time and place heretofore mentioned between the hours of 8:00 a.m. and 6:00 p.m.;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction; and that the typewritten transcript is a true record of the testimony given by said deponent;

And thereafter presented to said witness for signature; that this certificate does not purport to acknowledge or verify the signature hereto of the deponent.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal this_____day
of_____, 1997.

THOMAS A. RICHARDSON, Notary Public

My commission expires:
May 8, 2001

Job No. 6615